

**Town and County of Nantucket**  
**Board of Selectmen • County Commissioners**

Robert R. DeCosta, Chairman  
Rick Atherton  
Matt Fee  
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C. Elizabeth Gibson  
Town & County Manager

**AGENDA FOR THE MEETING OF THE  
BOARD OF SELECTMEN  
MARCH 23, 2016 - 6:00 PM  
PUBLIC SAFETY FACILITY COMMUNITY ROOM  
4 FAIRGROUNDS ROAD  
NANTUCKET, MASSACHUSETTS**

***I. CALL TO ORDER***

***II. BOARD ACCEPTANCE OF AGENDA***

***III. ANNOUNCEMENTS***

1. The Board of Selectmen Meeting is Being Video/Audio Recorded.
2. No Board of Selectmen Meeting Wednesday, March 30, 2016 (5<sup>th</sup> Wednesday).
3. 2016 Annual Town Meeting Starts Saturday, April 2, 2016 at 9:00 AM at Nantucket High School Auditorium, 10 Surfside Road; Annual Town Election is Tuesday, April 12, 2016 - Polls Open from 7:00 AM to 8:00 PM at Nantucket High School.

***IV. PUBLIC COMMENT\****

***V. NEW BUSINESS\****

***VI. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS***

1. Approval of Payroll Warrants for Week Ending March 20, 2016.
2. Approval of Treasury Warrants for March 23, 2016.
3. Approval of Pending Contracts for March 23, 2016 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

***VII. CITIZEN/DEPARTMENTAL REQUESTS***

1. Nantucket Autism Speaks Resource Center: Request for Proclamation Regarding "World Autism Awareness Day" on April 2, 2016; Request to Proclaim August 15-20, 2016 as "Autism Awareness Week".

***VIII. TOWN MANAGER'S REPORT***

1. Our Island Home Alternative Operational Models Presentation.

2. Update: Long-term Capital Financing Plan.

**IX. CONSENT ITEMS**

1. Request for Execution of Amendment to License Agreement to Substitute New Site Plan for Original Sketch Plan for Parcel of Land Situated at 10 Maine Avenue, Map 60.3.1, Parcels 433 and 459.
2. Planning Office:
  - a) Request for Acceptance of Grant of "One Big Beach" Easement over a Portion of Lot 2, 29 Nonantum Avenue and Parcels Described as follows:
  - b) Request for Execution of Purchase and Sale Agreement, Quitclaim Deed and Settlement Statement for Two Town-owned Yard Sale Parcels of Land on Pequot Street Shown as Lot 4 on Land Court Plan No. 42951B Filed with Nantucket Registry District of the Land Court and "Remainder of Parcel 6" as Shown on Plan of Land Entitled "Plan of Land in Nantucket, Massachusetts," Dated February 19, 2016, Prepared by Nantucket Surveyors, LLC and Recorded with Nantucket County Registry of Deeds as Plan No. 2016-19, Pursuant to Vote on Article 108 of 2008 Annual Town Meeting.
3. Planning Office:
  - a) Request for Acceptance of Grant of "One Big Beach" Easement over a Portion of Lot 1, 29 Nonantum Avenue and Parcels Described as follows:
  - b) Request for Execution of Purchase and Sale Agreement, Quitclaim Deed and Settlement Statement for Two Town-owned Yard Sale Parcels of Land on Holly Street, Shown as Lot 3 on Land Court Plan No. 42951B Filed with Nantucket Registry District of the Land Court and "Remainder of Parcel 9" as Shown on Plan of Land Entitled "Plan of Land in Nantucket, Massachusetts," Dated February 19, 2016, Prepared by Nantucket Surveyors, LLC and Recorded with Nantucket County Registry of Deeds as Plan No. 2016-19, Pursuant to Vote on Article 77 of 2010 Annual Town Meeting.
4. Planning Office: Request for Execution of Purchase and Sale Agreement, Quitclaim Deed and Settlement Statement for Town-owned Yard Sale Parcel Known as Taking Parcel A on Unnamed Way off Franklin Street as Shown on Plan of Land Entitled "Acquisition Plan for Portion of Paper Street between Franklin and West Chester Street, Nantucket, MA," Dated September 4, 2015, Prepared by Earle & Sullivan, Inc. and Recorded with Nantucket County Registry of Deeds as Plan No. 2015-86, Pursuant to Vote on Article 103 of 2015 Annual Town Meeting.
5. Planning Office: Request for Execution of Purchase and Sale Agreement, Quitclaim Deed and Settlement Statement for Town-owned Yard Sale Parcel Known as Parcel 1, West Chester Street as Shown on Plan of Land Entitled "Town Meeting Article, Paper Street Acquisition Plan, Town of Nantucket, Nantucket, Mass., Portion of West Chester Street," Dated June 25, 2015, Prepared by Ackme Survey LLC and Recorded with Nantucket County Registry of Deeds as Plan No. 2015-52, Pursuant to Vote on Article 103 of 2015 Annual Town Meeting.

***X. CITIZEN/DEPARTMENTAL REQUESTS***

1. Request for Selectmen to Schedule Public Hearing to Amend Town of Nantucket Shellfishing Policy and Regulations Regarding Sections 4.25-4.31, Conch Fishing.
2. Request for Approval of Change of Manager of Seasonal All-Alcoholic Beverages Club License for Sankaty Head Golf Club, Inc. d/b/a Sankaty Head Beach Club from Robert Kuratek, Manager to Lori Snell, Manager, for Premises Located at 18 Hoicks Hollow Road.

***XI. PUBLIC HEARINGS***

1. Public Hearing to Consider Taking a Portion of Paper Streets Described Below for General Municipal Purposes and or Public Access or Open Space, Pursuant to MGL Chapter 79, or Otherwise:
  - a) Bosworth Road Between a Line Extending the Northern Property Line of Assessor Map 92.4, Parcel 114 to the Northern Sideline of Wanoma Way (f.k.a. Atlantic Boulevard); Dorset Road Between the Northern Sideline of Wanoma Way (f.k.a. Atlantic Boulevard) and the Atlantic Ocean; Wanoma Way (f.k.a. Atlantic Boulevard) Between the Western Sideline of Dorset Road (f.k.a. Easton Road) to the Eastern Sideline of Joy Road; and Joy Road Between the Southern Sideline of Wanoma Way (f.k.a. Atlantic Boulevard) to the Atlantic Ocean, All as Authorized by Vote of Article 97 of 2014 Annual Town Meeting (Continued from January 27, 2016; MATTER TO BE DISMISSED).
2. Public Hearing to Consider Amendments to Town of Nantucket Shellfishing Policy and Regulations Regarding Scallop Licenses for People 60 Years and Older.

***XII. SELECTMEN'S REPORTS/COMMENT***

1. Resolution Regarding 13 C Street Historic District Commission Appeal from January 27, 2016 Board of Selectmen's Meeting.
2. Committee Reports.

***XIII. ADJOURNMENT***

***\* Identified on Agenda Protocol Sheet.***

**Board of Selectmen Agenda Protocol:**

- **Roberts Rules:** The Board of Selectmen follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.
- **Public Comment:** For bringing matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Board of Selectmen. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action. Except in emergencies, the Board will not normally take any other action on Public Comment. Any personal remarks or interrogation or any matter that appears on the regular agenda are not appropriate for Public Comment.

*Public Comment is not to be used to present charges or complaints against any specifically named individual, public or private; instead, all such charges or complaints should be presented in writing to the Town Manager who can then give notice and an opportunity to be heard to the named individual as per MGL Ch. 39, s 23B.*

- **New Business:** For topics not reasonably anticipated 48 hours in advance of the meeting.
- **Public Participation:** The Board welcomes valuable input from the public at appropriate times during the meeting with recognition by the Chair. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Selectmen may have questions on the clarity of information presented. The Board will hear any staff input and then deliberate on a course of action.
- **Selectmen Report and Comment:** Individual Selectmen may have matters to bring to the attention of the Board. If the matter contemplates action by the Board, Selectmen will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Board will not normally take action on Selectmen Comment.

**EXHIBIT 1**  
**AGREEMENTS TO BE EXECUTED BY TOWN MANAGER**  
**UNLESS RESOLUTION OF DISAPPROVAL BY BOARD OF SELECTMEN**  
**March 23, 2016**

Type of Agreement/Description	Department	With	Amount	Other Information	Source of Funding
Purchase Agreement	Town Admin	Structures Unlimited	\$29,000	Purchase of two storage sheds for Nobadeer Farm and Delta playing fields	Town Admin Professional Services
Supply Agreement	Town Admin	NextEra Energy	.08293 per kWh	Electricity supply for Town buildings for 2 years beginning Dec. 2016	Various budgets
Purchase Agreement	Natural Resources	Fiberglass Specialties, Inc.	\$10,564.30	Purchase and delivery of 22 fabricated specialty tanks for Shellfish Propagation Facility	Shellfish Management Plan Gift Fund
Purchase Agreement	Marine Dept	Gilman Corp.	Not to exceed \$34,999 over three years	Purchase of navigational buoys and supplies for three years	Waterways Fund
Training Agreement	Town Admin/ Police Dept	Daniel V. Girard	\$3,000 plus employee compensation and expenses	Agreement to sponsor employee to attend Police Academy; to be reimbursed by employee after appointment as full-time police officer	Police Dept budget
Training Agreement	Town Admin/ Police Dept	Bryan P. Jackson	\$3,000 plus employee compensation and expenses	Agreement to sponsor employee to attend Police Academy; to be reimbursed by employee after appointment as full-time police officer	Police Dept budget
Training Agreement	Town Admin/ Police Dept	Joseph H. Aleo	\$3,000 plus employee compensation and expenses	Agreement to sponsor employee to attend Police Academy; to be reimbursed by employee after appointment as full-time police officer	Police Dept budget
Lease Agreement	Town Admin	Commonwealth of Massachusetts	(\$5,940 for one year)	Annual lease agreement for Sheriff's Office at 20 South Water	n/a

Purchase Agreement	Natural Resources	Pentair Aquatic Eco-Systems	Not to exceed \$34,999 over three years	Purchase of various supplies for Shellfish Propagation Facility	Natural Resources budget (with reimbursement from MA Division of Marine Fisheries)
Purchase Agreement	Natural Resources	Pentair Aquatic Eco-Systems	\$30,676	Purchase of four heat pumps for Shellfish Propagation Facility	Natural Resources budget
Service Agreement	Finance	DLM Associates, Inc.	\$7,288 for last quarter of FY2016	Tax bill printing services	Finance Dept budget

## World Autism Awareness Day Proclamation 2016

Whereas **Autism** affects all persons regardless of age, race, religion, socio-economic status or geography;

Whereas the incidence of **Autism** in the United States is 1 in 68 children and 1 in 46 boys, with rates appearing to have increased similarly around the globe;

Whereas a child is diagnosed with **Autism** every 20 minutes;

Whereas based on data collected from North America, Western Europe and Japan, it is estimated that 70 million people worldwide have **Autism**;

Whereas on December 18, 2007 the United Nations General Assembly adopted resolution 62/139 World Autism Awareness Day by unanimous consent, encouraging UN Member States to take measures to raise awareness about **Autism** throughout society and to promote early diagnosis and early behavioral intervention;

Whereas the resolution designates **World Autism Awareness Day** as a United Nations Day to be observed every year starting in 2008 to raise global awareness of **Autism**;

Whereas the aims for **World Autism Awareness Day** are to inform the general public about the global health crisis of **Autism**, stress the importance of early diagnosis and early intervention, and to celebrate the unique talents and qualities of individuals with **Autism**;

Whereas **Autism** is a lifelong condition in which the bulk of cost falls in adulthood, creating an enormous economic impact;

Therefore, now, let it be resolved that the Nantucket Board of Selectmen implements the ideals of **World Autism Awareness Day** in the United States on April 2<sup>nd</sup>, in perpetuity, until the cure for **Autism** is found.

Signed this 23<sup>rd</sup> day of March 2016,

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Robert DeCosta, Chairman

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Matt Fee, Vice Chairman

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Rick Atherton

\_\_\_\_\_  
Tobias Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

## PROCLAMATION

Whereas, **Autism** is a complex whole body developmental disorder with a variety of symptoms that include problems speaking, communicating, developing social relationships, learning and behaving appropriately – as well as gastro-intestinal issues, and;

Whereas, **Autism** is a spectrum disorder involving many different “autisms” which can require a small village of parents, relatives, therapists and teachers to care for loved ones on a daily basis, and;

Whereas, **Autism** is prevalent, with 1 in 68 children and 1 in 46 boys, and knows no geographic, economic or cultural boundaries. There are three million children, teens and adults with autism who live in every neighborhood in America, and;

Whereas, it has been proven that early intervention is critical to helping a child with **Autism** reach their greatest potential, and;

Whereas, “**Autism Speaks**” is the world’s leading research and autism advocacy organization committed to funding cutting-edge science, raising public awareness, supporting families, and improving the quality of life for all people with autism, and ;

Therefore, now, by the virtue of the authority vested in us as members of the Board of Selectmen of Nantucket, We do hereby proclaim **August 15<sup>th</sup> – 20<sup>th</sup>, 2016** as “**Autism Awareness Week**” in the Town and County of Nantucket.

Signed this 23rd day of March, 2016

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Robert DeCosta, Chairman

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Matt Fee, Vice Chairman

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Rick Atherton

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Tobias Glidden

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Dawn E. Hill Holdgate



# The Future of Eldercare on Nantucket

The Role of Our Island Home



"DO THE BEST YOU  
CAN UNTIL YOU  
KNOW BETTER. THEN  
WHEN YOU KNOW  
BETTER, DO BETTER."  
— MAYA ANGELOU

## AGENDA

1. Evolution & Current State of Eldercare
2. Current State – Our Island Home
3. Planning for the Future
4. Stakeholder Input
5. Options / Analysis
6. Discussion

The Future  
Care at Home



Pre 1820s  
Care at Home



1820s Almshouses



Mental Hospitals



2000  
Small  
House



## The Evolution of Eldercare

1905  
Early Institutions



1942 Licensed  
Nursing Home



1980s Assisted Living



1960 "modern" Nursing Home







## Current State - Long Term Care

# 1999 Supreme Court Olmstead Decision Directs Deinstitutionalization

“Confinement in an institution severely diminishes the everyday life activities of individuals...”



Least restrictive  
environment



Olmstead required states to develop plans to provide for least restrictive environment and deinstitutionalization



Massachusetts: "Community First"

## VISION

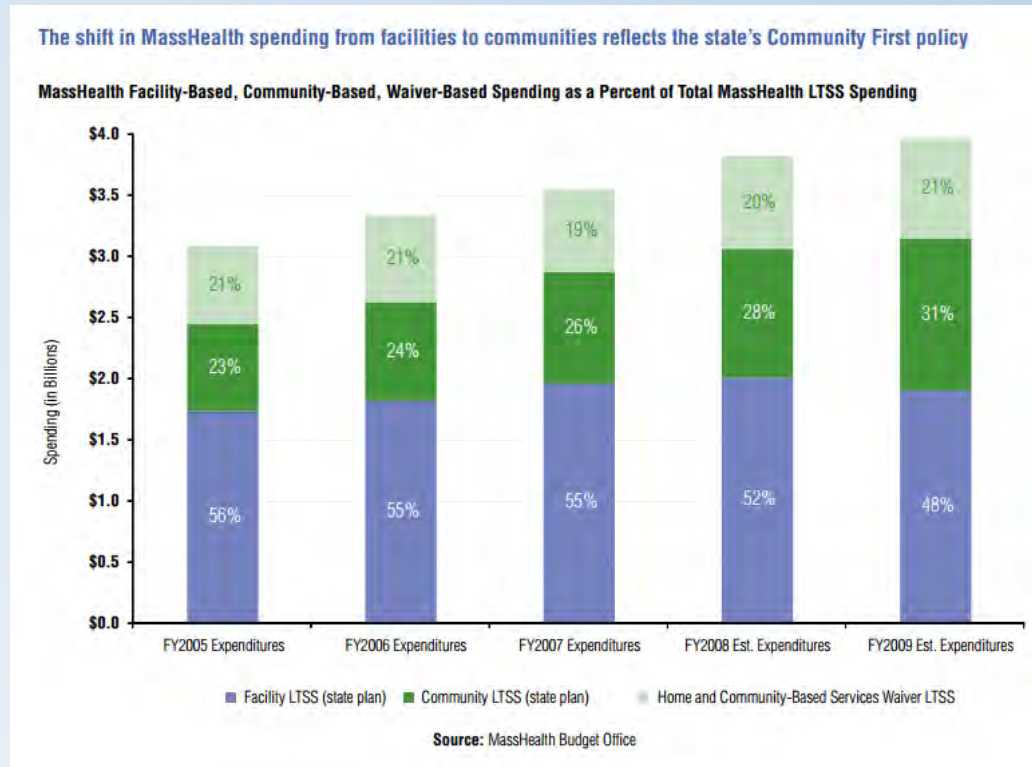
Empower and support people with disabilities and elders to live with **dignity** and **independence** in the community by expanding, strengthening, and integrating systems of community-based long-term supports that are person-centered, high in quality and provide optimal choice.

## GOALS

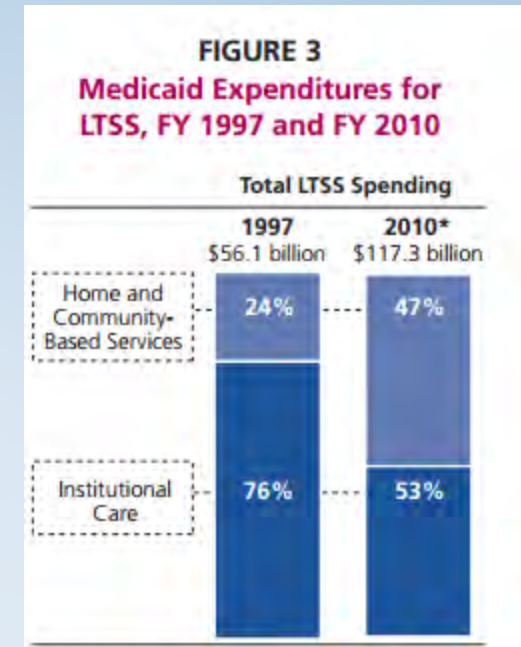
- Help individuals transition from institutional care
- Expand access to community-based long-term supports
- Improve the capacity and quality of community-based long-term supports
- Expand access to affordable and accessible housing with supports
- Promote employment of persons with disabilities and elders
- Promote awareness of long-term supports



## Massachusetts



## National



Result: Funding Shifts

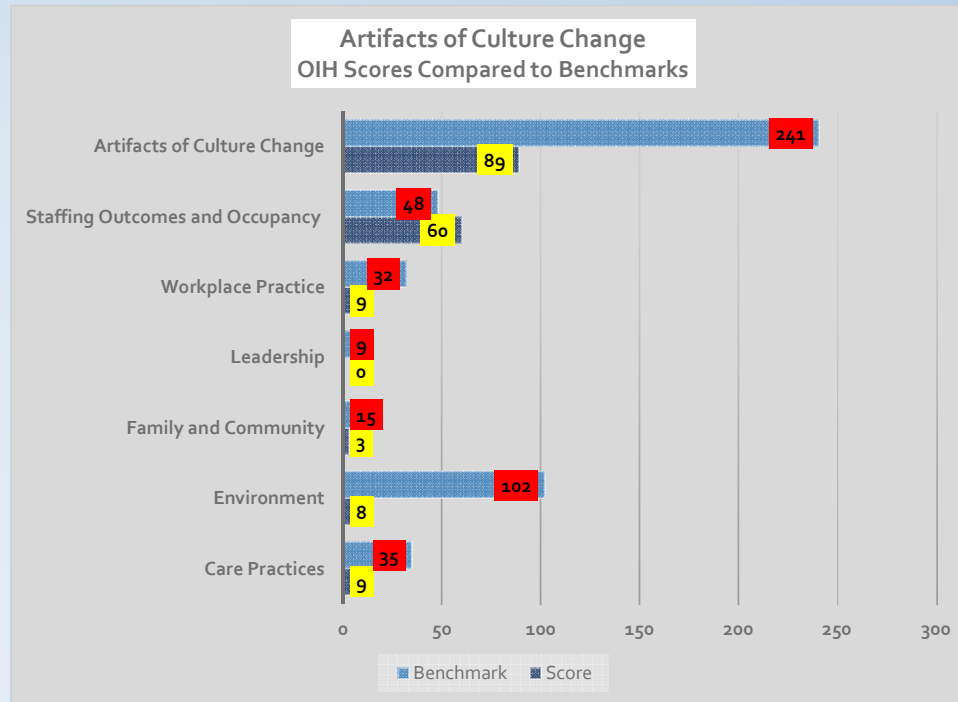




## Current State - OIH

Center for Medicare & Medicaid Services Quality Ratings		
Overall	 BELOW AVERAGE	Combines: <ul style="list-style-type: none"> <li>• Health inspections</li> <li>• Quality measures</li> <li>• Staffing</li> </ul>
Health Inspection	 AVERAGE	<ul style="list-style-type: none"> <li>• 3 most recent inspections</li> <li>• complaints inspections- 3yrs</li> </ul>
Staffing	 BELOW AVERAGE	<ul style="list-style-type: none"> <li>• Registered nurse hours per resident per day</li> <li>• total staffing hours per resident per day.</li> </ul>
Quality Measures	 MUCH BELOW AVERAGE	Clinical quality
Fire & Health Safety	 BELOW AVERAGE	Building

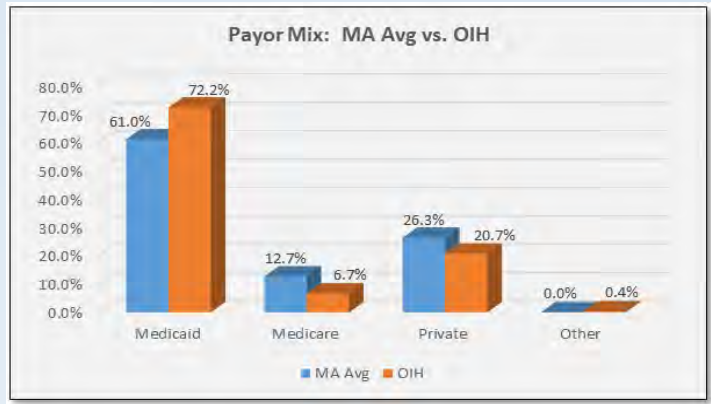
## Operational Analysis – OIH Publicly Reported Quality Data



Reflects Highly Bureaucratic  
Traditional Institutional  
Model of Care

## Operational Analysis: Culture

## Revenue Dynamics



### Average Daily Rates: Government Payor Sources

	2014	2015	ytd2016
Avg Medicaid Rate	197.25	197.15	192.78
Avg Medicare Rate	349.48	394.54	311.38

## Expense Structure

PPD = Per Patient per Day expenditure

Department Totals PPDs	Nursing	Dietary	Laundry, Hskpg, Plant	G&A	Payroll Benefits	Totals
2014 Northeast 90th Percentile	99.48	15.50	26.76	22.47	18.08	182.29
2014 Northeast 50th Percentile	134.04	19.06	38.62	32.32	23.46	247.50
2014 Northeast 10th Percentile	177.18	26.74	52.95	45.94	39.06	341.87
<b>OIH</b>	<b>222.87</b>	<b>51.86</b>	<b>44.34</b>	<b>65.10</b>	<b>115.99</b>	<b>500.16</b>
Comparison to 10th Percentile	45.69	25.12	(8.61)	19.16	76.93	158.29
difference in \$\$\$s (ppd difference x total patient days)	672,377	369,647	(126,704)	281,999	1,132,099	2,329,417

Salary Costs PPDs	DON, RN & LPN	Aides	Other Nursing Admin	Soc Svcs, Act, Ancil Svcs	Dietary	Laundry, Hskg, Plant	G&A	Totals
2014 Northeast 90th Percentile	29.85	30.59	4.01	5.51	7.12	4.78	3.94	85.80
2014 Northeast 50th Percentile	47.48	36.54	9.04	22.03	10.05	9.85	8.21	143.20
2014 Northeast 10th Percentile	67.66	47.76	19.51	37.01	13.97	17.19	16.65	219.75
<b>OIH</b>	<b>67.42</b>	<b>92.71</b>	<b>19.47</b>	<b>15.32</b>	<b>40.65</b>	<b>29.84</b>	<b>20.73</b>	<b>286.15</b>
Comparison to 10th Percentile	(0.24)	44.95	(0.04)	(21.69)	26.68	12.65	4.08	66.40
difference in \$\$\$s (ppd difference x total patient days)	(3,532)	661,531	(589)	(319,188)	392,599	186,156	60,098	977,076

## Current Operation: Fiscal Analysis



\* Excluding Town subsidy and State CPE receipts for municipally-owned providers

## Current Operation: Projected Forward



# Planning for the Future

Older Adult Population by Age and Year Our Island Home Market Area								
Population	2010		2016		2020		% Annual Change	
	#	% of Total	#	% of Total	#	% of Total	(2010-2015)	(2015-2020)
<b>Total</b>	<b>10,172</b>	<b>100.0%</b>	<b>10,680</b>	<b>100.0%</b>	<b>11,070</b>	<b>100.0%</b>	<b>0.8%</b>	<b>0.9%</b>
55 to 64	1,285	12.6%	1,493	14.0%	1,574	14.2%	2.9%	1.4%
65 to 74	692	6.8%	961	9.0%	1,173	10.6%	6.2%	5.8%
75 to 84	373	3.7%	436	4.1%	511	4.6%	2.4%	4.5%
85+	162	1.6%	202	1.9%	206	1.9%	4.8%	0.5%
<b>55+</b>	<b>2,512</b>	<b>24.7%</b>	<b>3,092</b>	<b>29.0%</b>	<b>3,464</b>	<b>31.3%</b>	<b>3.9%</b>	<b>3.1%</b>
<b>65+</b>	<b>1,227</b>	<b>12.1%</b>	<b>1,599</b>	<b>15.0%</b>	<b>1,890</b>	<b>17.1%</b>	<b>4.9%</b>	<b>4.8%</b>
<b>75+</b>	<b>535</b>	<b>5.3%</b>	<b>638</b>	<b>6.0%</b>	<b>717</b>	<b>6.5%</b>	<b>3.1%</b>	<b>3.2%</b>

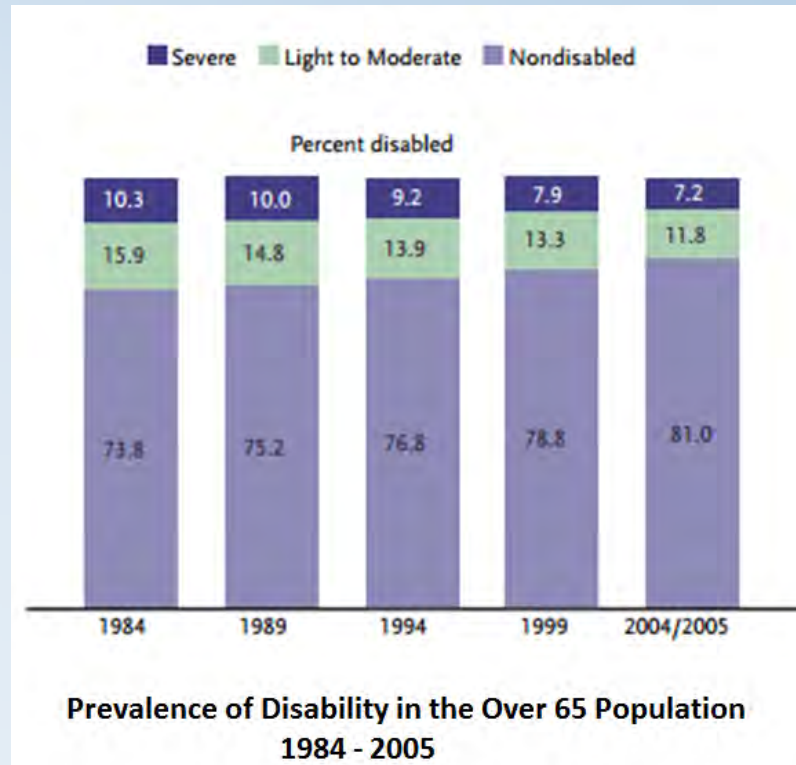
65+	1,890	17.1%
75+	717	6.5%

Relatively small market for 75+, regardless of demand for Nursing Home services

Households 75+ by Income Our Island Home Market Area							
Income	2000		2015		2020		% Annual Change
	#	%	#	%	#	%	(2000-2015) (2015-2020)
<\$15,000	114	35.1%	113	26.3%	117	23.3%	-0.1% 0.7%
\$15,000 - \$24,999	9	2.8%	46	10.7%	48	9.6%	27.4% 0.9%
\$25,000 - \$34,999	30	9.2%	65	15.2%	76	15.1%	7.8% 3.4%
\$35,000 - \$49,999	56	17.2%	62	14.5%	72	14.3%	0.7% 3.2%
\$50,000 - \$74,999	39	12.0%	40	9.3%	53	10.6%	0.2% 6.5%
\$75,000 - \$99,999	7	2.2%	25	5.8%	30	6.0%	17.1% 4.0%
\$100,000 - \$124,999	28	8.6%	17	4.0%	23	4.6%	-2.6% 7.1%
\$125,000 - \$149,999	8	2.5%	17	4.0%	23	4.6%	7.5% 7.1%
\$150,000 - \$199,999	14	4.3%	17	4.0%	23	4.6%	1.4% 7.1%
\$200,000+	20	6.2%	27	6.3%	37	7.4%	2.3% 7.4%
<b>Total</b>	<b>325</b>	<b>100.0%</b>	<b>429</b>	<b>100.0%</b>	<b>502</b>	<b>100.0%</b>	<b>2.1%</b> <b>3.4%</b>
<b>\$35,000+</b>	<b>172</b>	<b>52.9%</b>	<b>205</b>	<b>47.8%</b>	<b>261</b>	<b>52.0%</b>	<b>1.3%</b> <b>5.5%</b>
<b>\$50,000+</b>	<b>116</b>	<b>35.7%</b>	<b>143</b>	<b>33.3%</b>	<b>189</b>	<b>37.6%</b>	<b>1.6%</b> <b>6.4%</b>
<b>\$75,000+</b>	<b>77</b>	<b>23.7%</b>	<b>103</b>	<b>24.0%</b>	<b>136</b>	<b>27.1%</b>	<b>2.3%</b> <b>6.4%</b>
<b>\$100,000+</b>	<b>70</b>	<b>21.5%</b>	<b>78</b>	<b>18.2%</b>	<b>106</b>	<b>21.1%</b>	<b>0.8%</b> <b>7.2%</b>

Relatively high %-age of 75+ with less than \$35k income

## Future Population & Needs



Decrease in Disability  
Due to Medical Advances

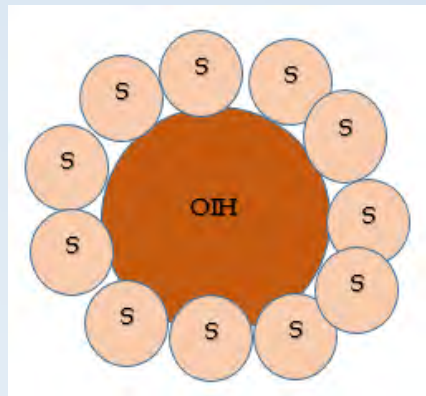
## Mitigating Factors in Bed Need Projections



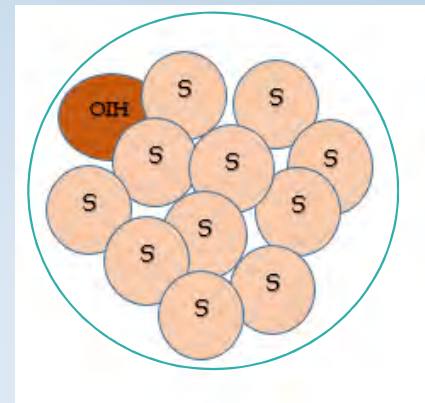


Primary reimbursement is from the Government which is committed to Community Based Services

## Mitigating Factors in Bed Need Projections



OIH as Primary  
Care Provider for  
Frail Elders



OIH as Part of a Comprehensive  
System of Care

# Planning Requires a Fundamental Shift in Thinking



Approximately 25% of current  
OIH residents have low care needs  
and could be cared for in an alternate setting

## Mitigating Factors in Bed Need Projections

Based on demographic projections alone, need is for 60 seniors to receive care from the LTC system.

Mitigating factors point to a project sized at 30 Nursing Home Beds and 10 Affordable (Medicaid funded) Assisted Living beds.

## Project Size Projections

- Nantucket Government
- Resident Interviews
- Other community leaders in -
  - Healthcare
  - Community-based services
  - Demographics
- Community group meeting
- Sherburne Commons leadership
- Concerned citizens
- Focus Groups
  - Family members
  - Direct care staff
  - OIH leadership staff

## Input from Stakeholders

Common	Some	Few
<p>Nantucket needs a Nursing Home</p> <p>OIH needs replacement</p> <p>Taxpayer burden is high – need to reduce</p> <p>Do whatever is best for the residents</p>	<p>Keep at current site – view and historical significance</p> <p>Move to Sherburne Commons and sell the current site to the Land Bank</p> <p>No land sale to commercial entity</p> <p>No partnership with Sherburne Commons</p> <p>Don't want "pods" no need to change</p>	<p>Close OIH</p> <p>Do nothing – already have too many expensive town projects underway</p>

## Themes of Interviews with Stakeholders

### **Improvement in 7 domains of Quality of Life**

- Privacy
- Dignity
- Meaningful activity
- Strength of relationship
- Autonomy
- Food enjoyment
- Individuality



### **Improved Quality of Care**

- Elders maintain self-care abilities - longer
- Less depression
- Less boredom
- Less loss of appetite and weight loss
- Less wheelchair dependence
- Fewer pressure ulcers

### **Compared to traditional nursing homes**

- Higher direct care time : 23-31 more minutes/day
- Higher family satisfaction
- Higher staff satisfaction

### **Dementia Care**

Small House recommended by Alzheimer's Foundation as excellent model of care for individuals with dementia

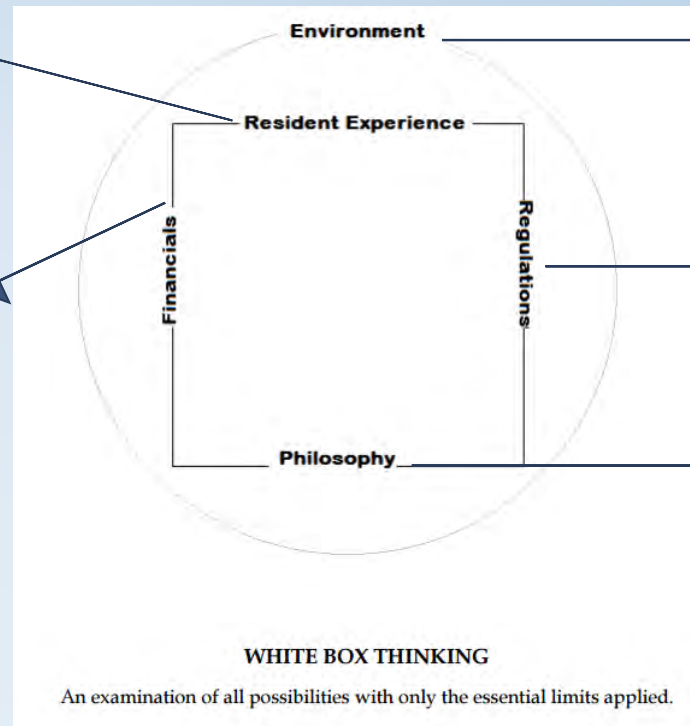
## **Small House Research Demonstrated Outcomes**



# Analysis of Options



Research demonstrates  
better outcomes  
in deinstitutionalized  
models of care



“Community First”

No new Nursing Home beds  
available in MA

Take care of our own on  
Island

Medicare – Hospital has swing beds  
Medicaid – Stagnant  
Private – Limited  
Government – responsibility  
to constituents to keep tax burden  
reasonable

## Factor Analysis of Nantucket Eldercare & OIH’s role in Delivery System

## White Box Options

- 1) Maintain the Status Quo
- 2) Remodel Existing OIH
- 3) Sale to Outside Entity Before or After Construction
- 4) Traditional Nursing Home on Existing Site or Sherburne Commons
- 5) Small House Nursing Home at Existing Site
- 6) Small House Nursing Home at Sherburne Commons



Financial	Quality of Life & Quality of Care	Demographic & Reimbursement Elasticity	Other Factors
<p>Escalating losses related to:</p> <ul style="list-style-type: none"> <li>• Static reimbursement rates</li> <li>• Escalating operating costs</li> <li>• Escalating demand for repair &amp; maintenance costs</li> <li>• Potential loss of state-funded CPE revenues</li> <li>• Building issues could produce citations and civil monetary penalties</li> </ul> <p>Fiscal burden remains on Town</p>	<p>Continued issues with quality outcomes and meeting state requirements</p>	<p>None – will not meet changing demands of population</p> <p>Lacks expansion space</p>	<p>Ethical responsibility to provide best quality of care in the least restrictive environment</p> <p>Legal responsibility to comply with Olmstead</p> <p>Some stakeholders have strong conviction to keep OIH at current location</p>

## 1) Maintain the Status Quo

Financial	Quality of Life & Quality of Care	Demographic & Reimbursement Elasticity	Other Factors
<p>Escalating losses related to:</p> <ul style="list-style-type: none"> <li>• Static reimbursement rates</li> <li>• Escalating operating costs</li> <li>• Escalating demand for repair &amp; maintenance costs</li> <li>• Potential loss of state-funded CPE revenues</li> <li>• Building issues could produce citations and civil monetary penalties</li> </ul> <p>Fiscal burden remains on Town</p>	<p>Continued issues with quality outcomes and meeting state requirements</p>	<p>None – will not meet changing demands of population because it lacks expansion space to add community based services</p>	<p>Costs of reconstruction of existing building unreasonable because of Federal/State regulations which require that renovation of <b>any</b> part of a facility bring the <b>entire</b> facility up to the current code. This represents a rebuild</p> <p>Some stakeholders have strong conviction to keep OIH at current location</p>

## 2) Reconstruct Existing Building

Financial	Other Factors
<p>Fiscal burden no longer on Town, but ...</p> <p><b>Unlikely that any buyer would purchase due to:</b></p> <ul style="list-style-type: none"> <li>• Current level of operational losses and presence of systemic challenges to achieve profitability</li> <li>• Sale to third party would eliminate state-funded CPE revenues (allocated only for municipally-owned nursing homes)</li> <li>• Lack of short term rehabilitation market</li> <li>• General lack of interest in facilities with union contract in place</li> <li>• Logistical challenges and expenses associated with Island location</li> </ul>	<p>Sale option has been explored, to no avail</p> <p>Even if sale were consummated, no control over continued operation for the long-term</p> <p>Risk of closure high due to specific dynamics that would likely lead to mounting losses</p>

### 3) Sale to Outside Company Before or After New Construction

Financial	Quality of Life & Quality of Care	Demographic & Reimbursement Elasticity	Other Factors
<p><i>Existing site</i> – more expensive to build, and more expensive to operate</p> <p><i>New site</i> - less expensive to build, but still more expensive to operate</p> <p>Town subsidy higher than other alternatives, regardless of site</p> <p>If remain at existing site - no potential sale to Land Bank, thus a loss of revenue from the sale to offset construction costs</p> <p>Fiscal burden remains on Town</p>	<p>Will not improve Quality of Life in the same manner as afforded in a person centered home like environment</p>	<p>Current site: None – will not meet changing demands of population because it lacks expansion space to add community based services</p> <p>Building plan eliminates ability to change programs to meet changing needs</p>	<p>Some stakeholders have strong conviction to keep OIH at current location</p>

#### 4) Construction of Traditional Nursing Home Building – Existing Site or Sherburne Commons

Financial	Quality of Life & Quality of Care	Demographic & Reimbursement Elasticity	Other Factors
<p><i>Existing site</i> – not feasible to build given site restrictions; and even if it were feasible, not programmatically optimal</p> <p>Town subsidy higher than other alternatives, regardless of site</p> <p>No potential sale to Land Bank, thus a loss of revenue from the sale to offset construction costs</p> <p>Fiscal burden remains on Town</p>	<p>Integral facility is not feasible to be placed on site without impacting existing facility</p> <p>Detached homes do not provide larger community gathering areas</p>	<p>Current site: None – will not meet changing demands of population because it lacks expansion space to add community based services</p> <p>Building plan eliminates ability to change programs to meet changing needs</p>	<p>Some stakeholders have strong conviction to keep OIH at current location</p> <p>Storm surge vulnerability</p> <p>Construction phasing required</p>

## 5) Construction of a Small House Complex at the Existing Site

Financial	Quality of Life & Quality of Care	Demographic & Reimbursement Elasticity	Other Factors
<p>Construction costs less than most other alternatives, more than some</p> <p>Least expensive model to operate (in terms of Town subsidy required)</p> <p>Potential revenue from sale of land to Land Bank</p> <p>Fiscal burden remains on Town, but marginally less than other models</p>	<p>Expected improvement in Quality of Life and Quality of Care</p>	<p>Very elastic – potential for site to become the hub of community services – a one stop center for services and providers</p> <p>Provides flexibility to shift houses to meet service demands if needs or reimbursement changes</p>	<p>Easy transition-build then move</p>

**Best Fit with Existing and Future Eldercare Needs on Island:**

**6) Construct a Small House 30 Bed Nursing Home and 10 bed Affordable Assisted Living at Sherburne Commons**



(\$000's)

Scenario:	Current State	Traditional Bdg- Existing Site	Traditional Bdg- New Site	Small House - New Site	Small House - New Site
Number of SNF Beds	45	40	40	30	40
Number of AL Units	-	-	-	10	-
Project costs (Uses)	-	21,640	18,461	23,864	23,864
Cash Flow:					
Loss from Operations	(4,454)	(2,829)	(2,829)	(1,851)	(1,959)
Debt service	-	(1,634)	(795)	(1,203)	(1,203)
Routine capital	(150)	(40)	(40)	(40)	(40)
Net Cash Flow	\$ (4,604)	\$ (4,503)	\$ (3,664)	\$ (3,094)	\$ (3,202)

\* Excluding Town subsidy and State CPE receipts for municipally-owned providers

## Summary Options – FY2020



\* Excluding Town subsidy and State CPE receipts for municipally-owned providers

Represents losses solely from Operations  
across different scenarios

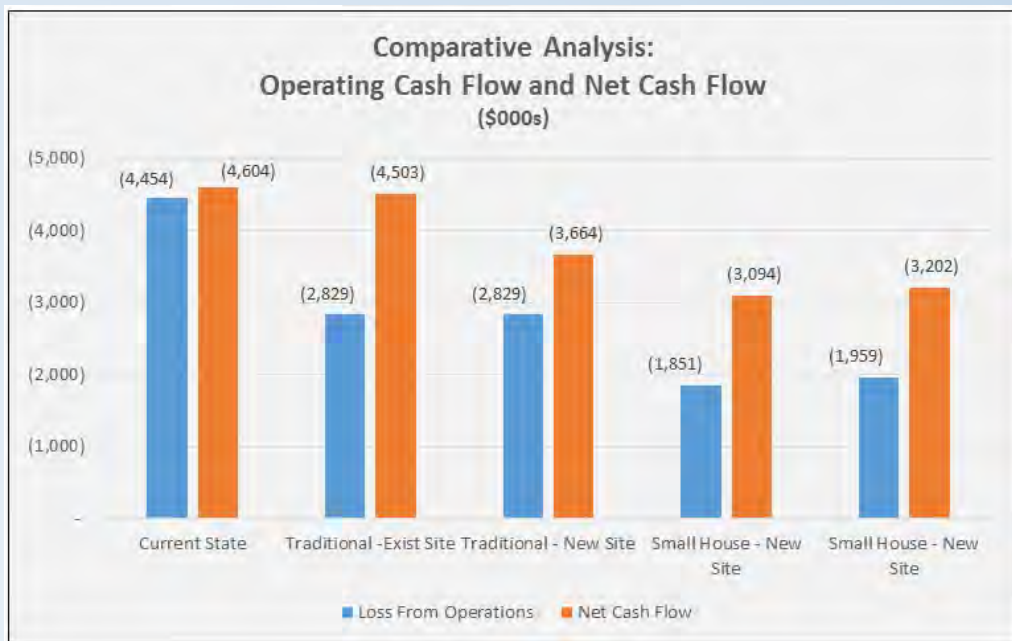
## Summary Options – FY2020



\* Excluding Town subsidy and State CPE receipts for municipally-owned providers

Represents net cash flow losses after factoring in financing costs related to construction, and ongoing capital expenditures

## Summary Options – FY2020



\* Excluding Town subsidy and State CPE receipts for municipally-owned providers

Represents net cash flow losses after factoring in financing costs related to construction, and ongoing capital expenditures

## Summary Options – FY2020



# Discussion

*Thank you for the opportunity to collaborate with the Town of Nantucket !*



## Additional Recommendations

*Involve key stakeholders to:*

- Review existing services
- Identify needs and gaps in services
- Create a 5-year plan for building a comprehensive eldercare system that echoes “Community First”



Additional Recommendations: Formalize Coordination of Services

*Engage legal counsel to fully explore:*

- Establishment of a Public Benefit Corporation to own/operate OIH
- Conversion of OIH to a freestanding not for profit/voluntary corporation



Additional Recommendation: Consider Alternative Ownership Structures



The State-funded Home Modification Loan Program

The Massachusetts Partnership Long Term Care Insurance

Reverse Mortgages



Additional Recommendations: Public Awareness Campaign

Initiate a Quality Improvement Program for Quality of Care and Quality of Life utilizing the Advancing Excellence in America's Nursing Home Platform



Additional Recommendations: Quality Improvement

Added cost of Management Company could be more than offset by the Potential Benefits:

- Operational expertise will improve budgetary and quality outcomes
- Shifts operational burden away from the Town while retaining ownership
- Provides access to pool of talent for succession planning

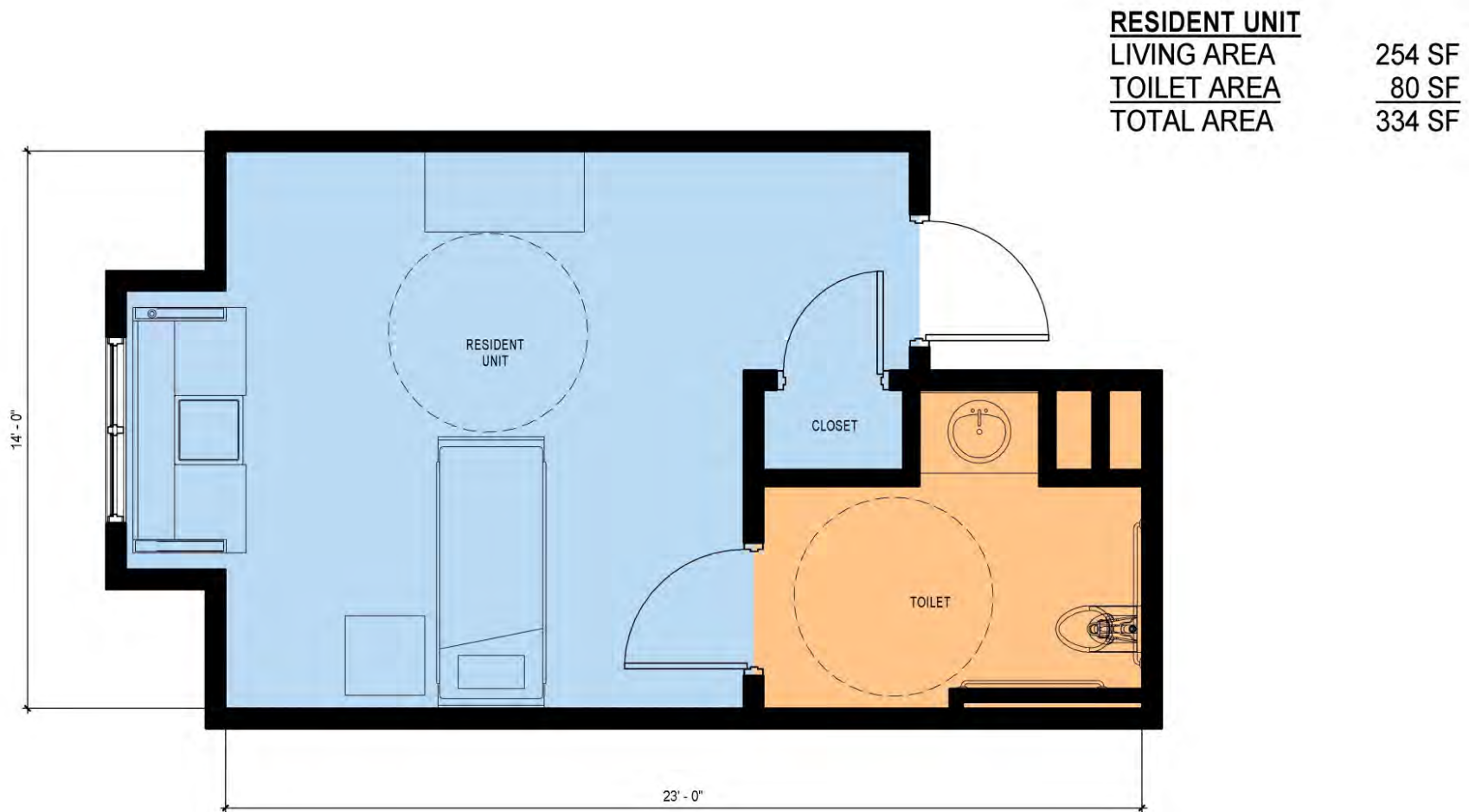


Additional Recommendation: Consider a Management Company

Investigate the Student Loan Forgiveness Programs that are available to professional staff if they are employed in an underserved area



Additional Recommendations: Recruitment of Health Care Staff



Typical Resident Unit Plan



Typical 10-Bed Home Plan

## Nantucket Storm Surge Analysis

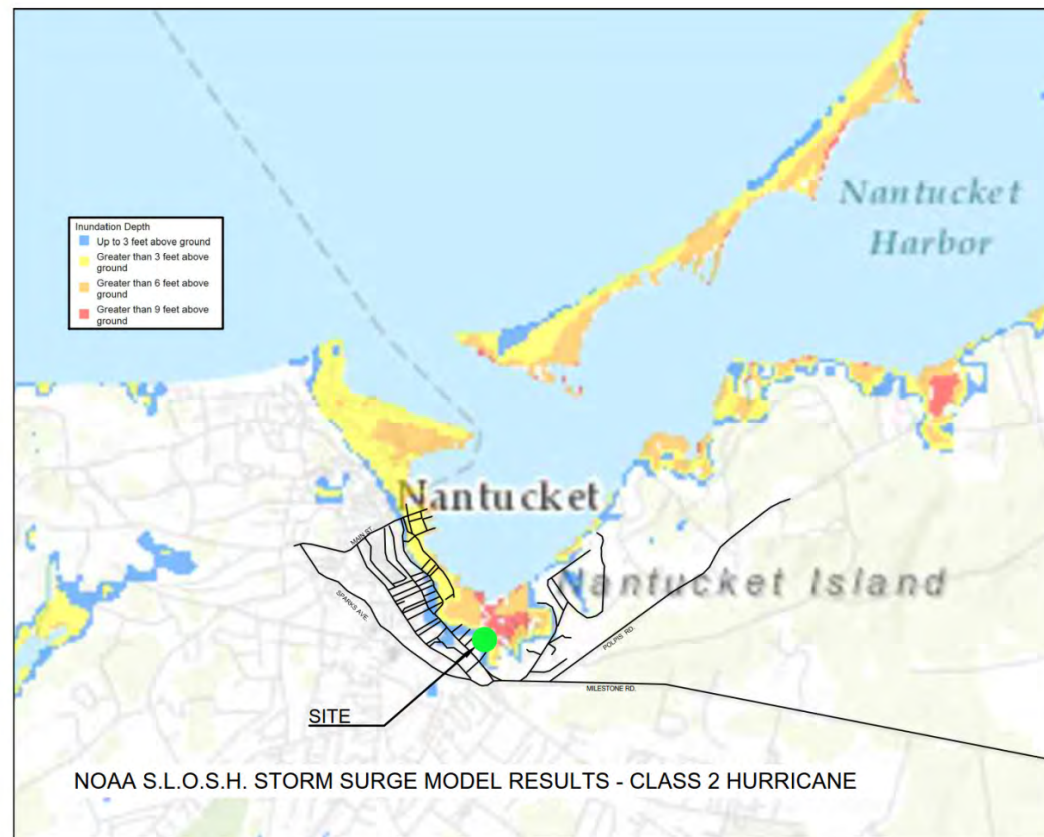
### Nantucket Hurricane History

- 1924: Unnamed, Cat. 1
- 1938: Great New England Hurricane, Cat. 3
- 1944: Great Atlantic Hurricane, Cat. 2
- 1954: Hurricane Edna, Cat. 3
- 1954: Hurricane Carol, Cat. 3
- 1960: Hurricane Donna, Cat. 2
- 1985: Hurricane Gloria, Cat. 2
- 1991: Hurricane Bob, Cat. 2

### Class 2 Hurricane

- Portion of site closest to shore may be inundated with up to 3-ft of storm surge

Source:  
NOAA S.L.O.S.H. (Sea, Lake, and Overland Surges from Hurricanes)

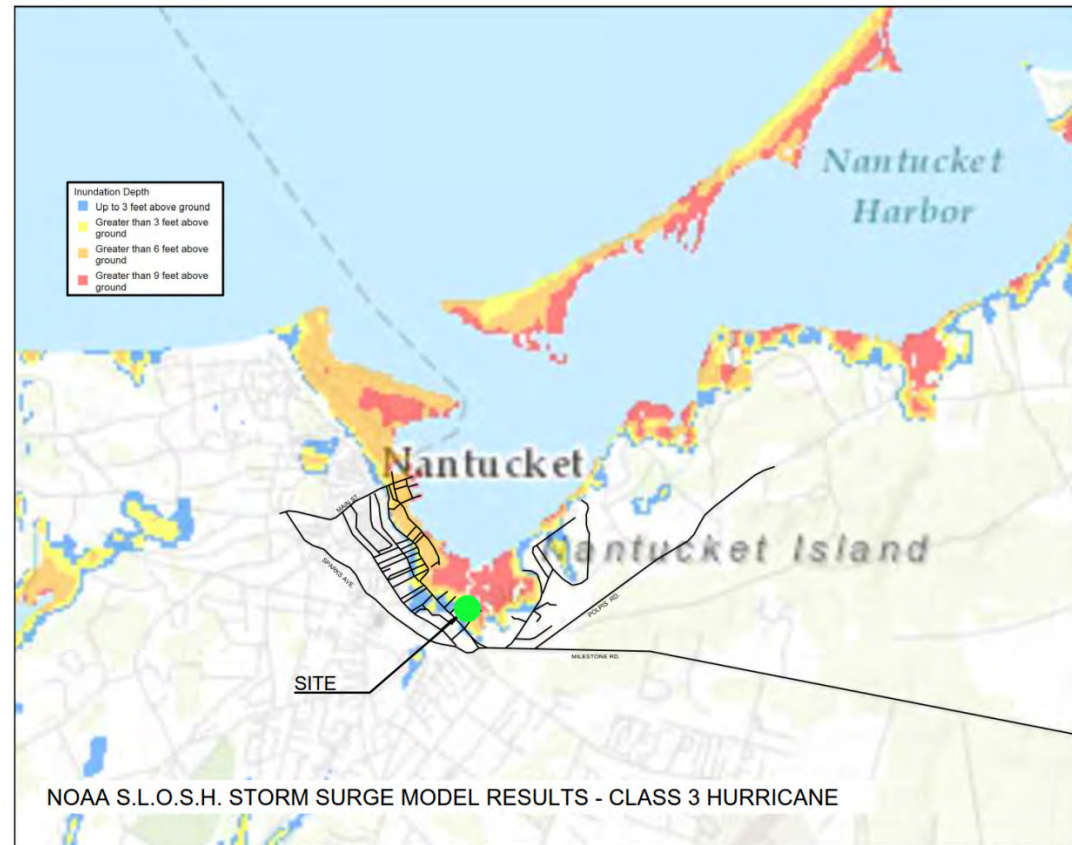




## Nantucket Storm Surge Analysis

### Class 3 Hurricane

- Majority of site may be inundated by storm surge with depths up to 6-ft.

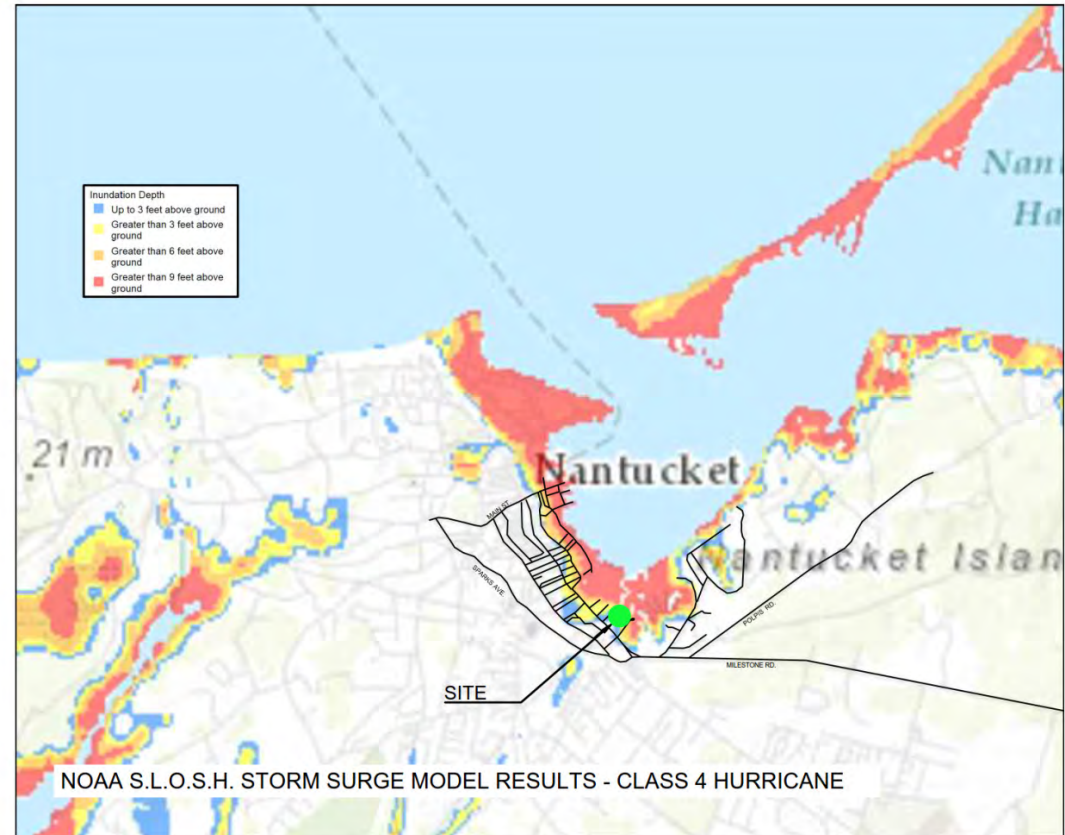


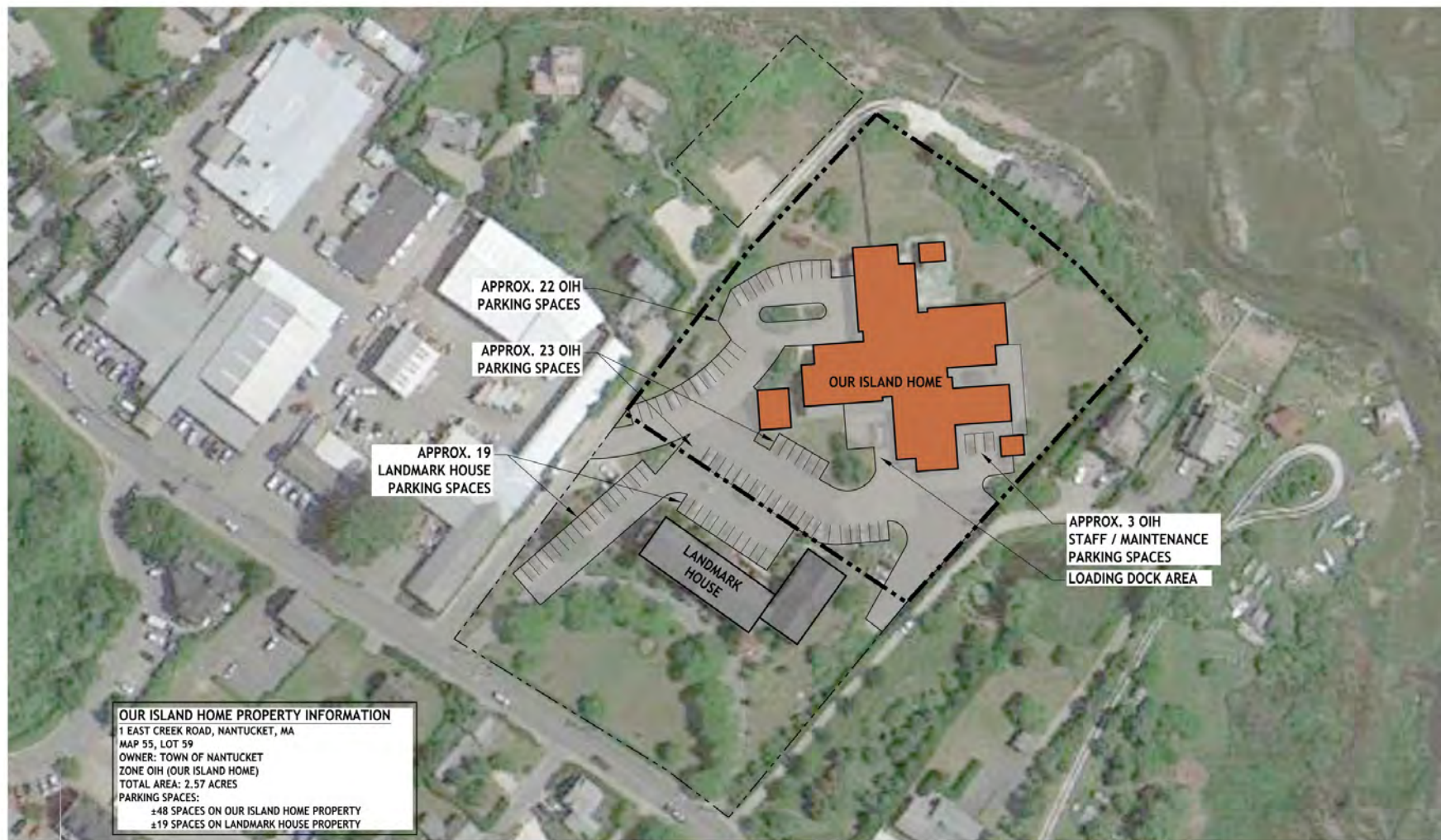


## Nantucket Storm Surge Analysis

### Class 4 Hurricane

- Majority of site may be inundated by storm surge with depths up to 9-ft.



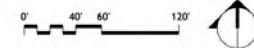


## OUR ISLAND HOME - FEASIBILITY STUDY

### EXISTING CONDITIONS

### NANTUCKET, MA

MARCH 2016





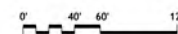


## OUR ISLAND HOME - FEASIBILITY STUDY

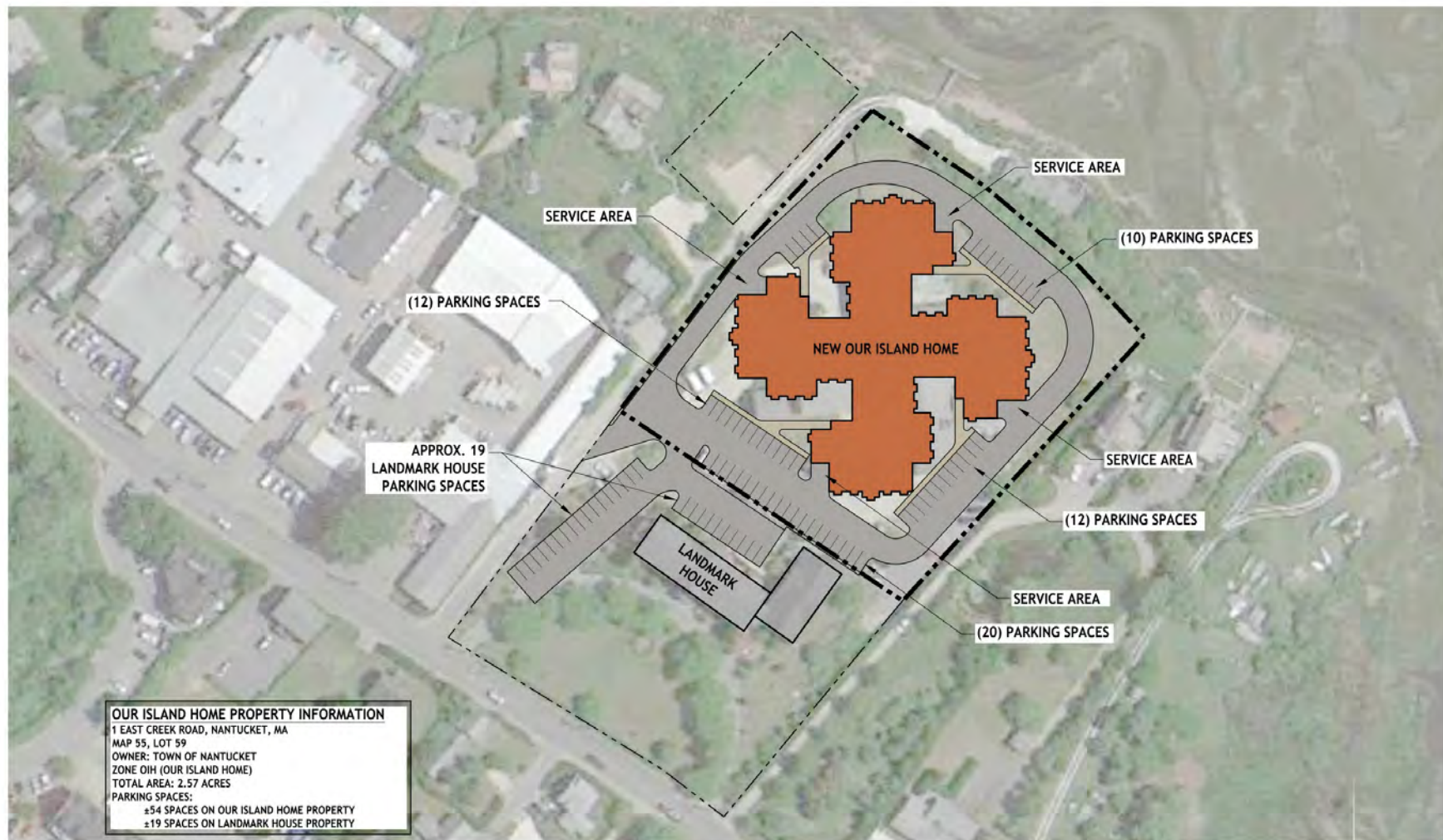
### SITE PLAN OPTION 3

NANTUCKET, MA

MARCH 2016



SMRT



## OUR ISLAND HOME - FEASIBILITY STUDY

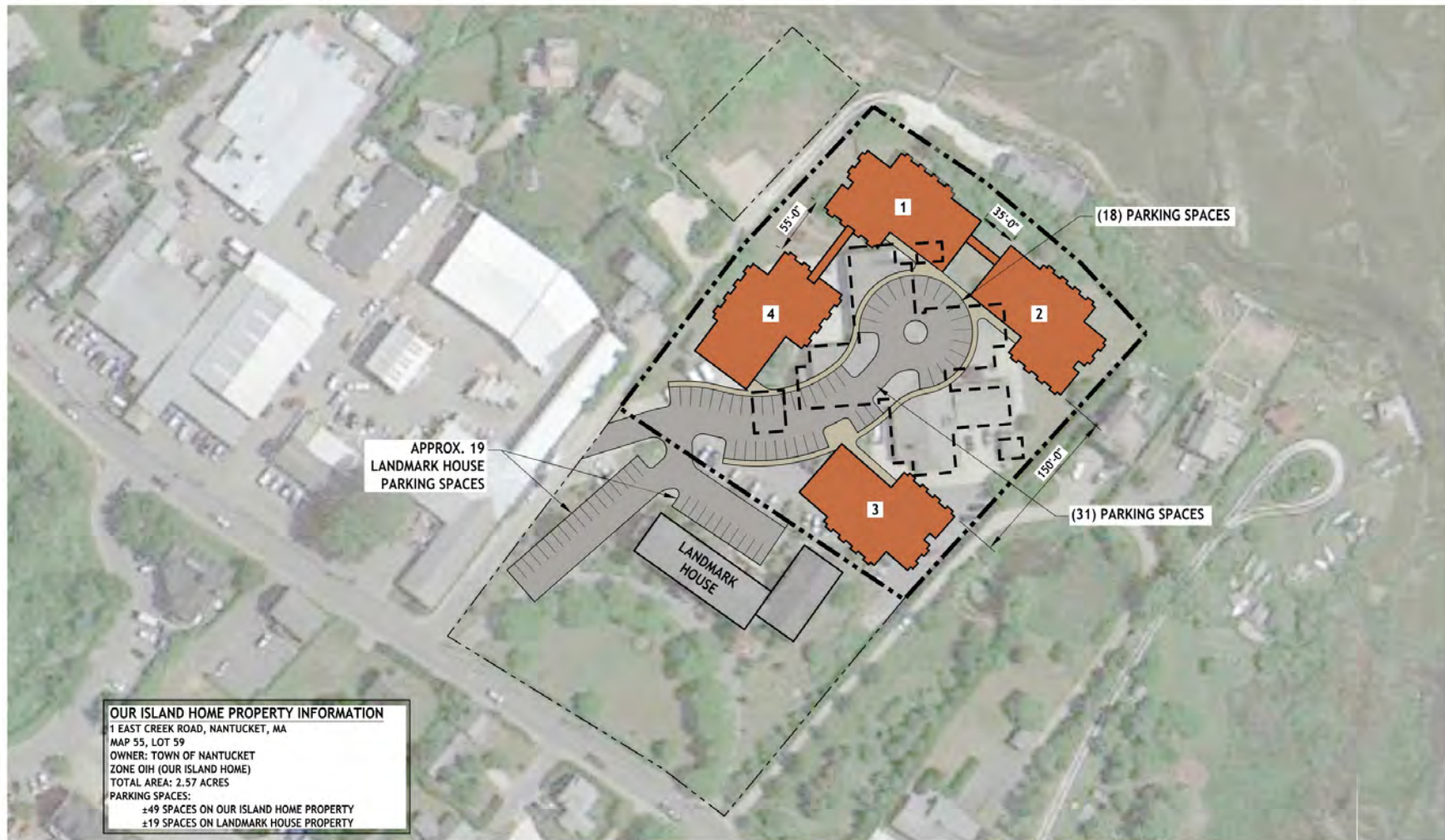
### SITE PLAN OPTION 1

NANTUCKET, MA

MARCH 2016





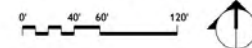


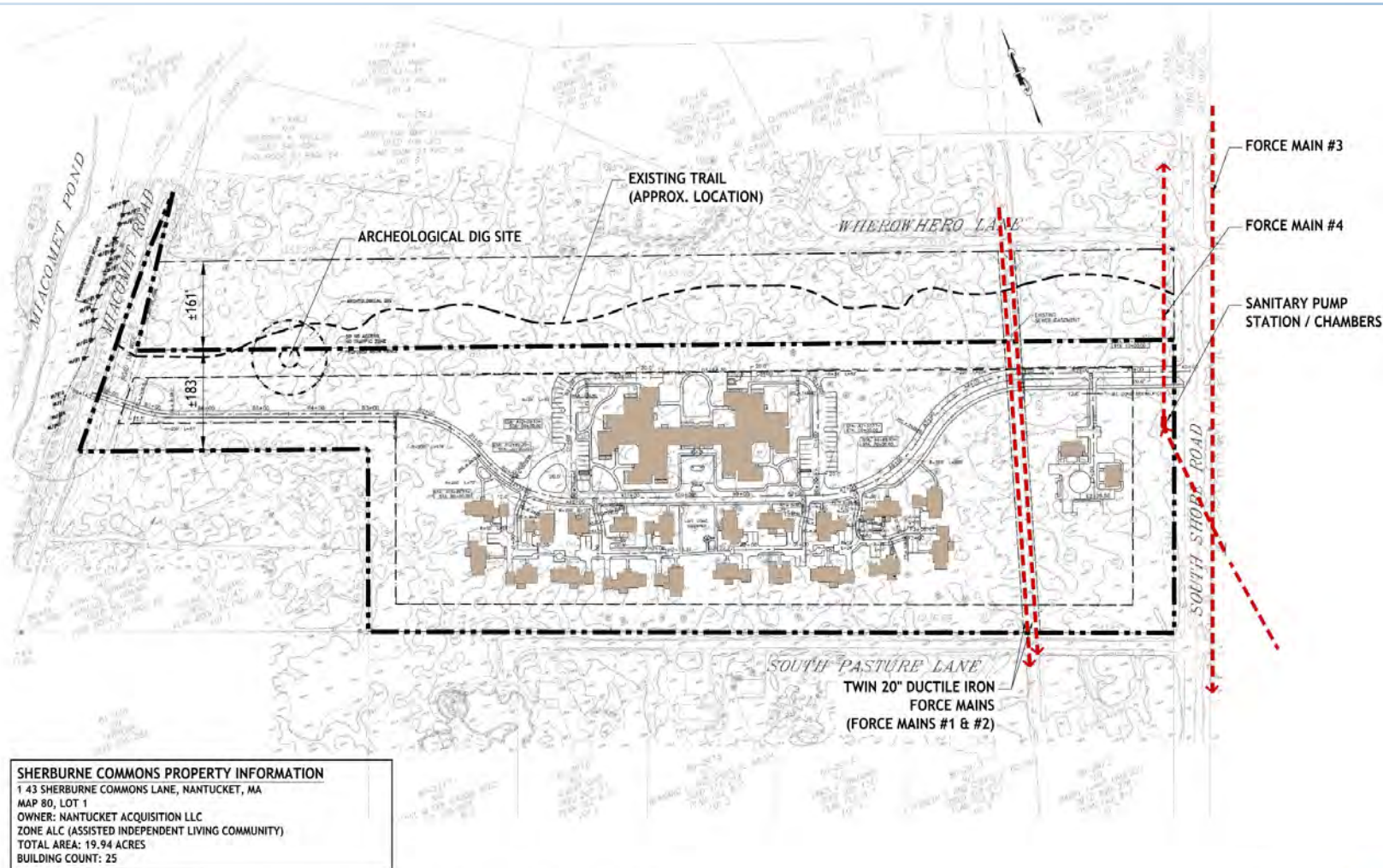
## OUR ISLAND HOME - FEASIBILITY STUDY

### SITE PLAN OPTION 2

NANTUCKET, MA

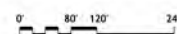
MARCH 2016





# **OUR ISLAND HOME - FEASIBILITY STUDY** SHERBURNE COMMONS SITE - EXISTING CONDITIONS NANTUCKET, MA

MARCH 2016

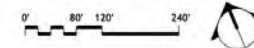


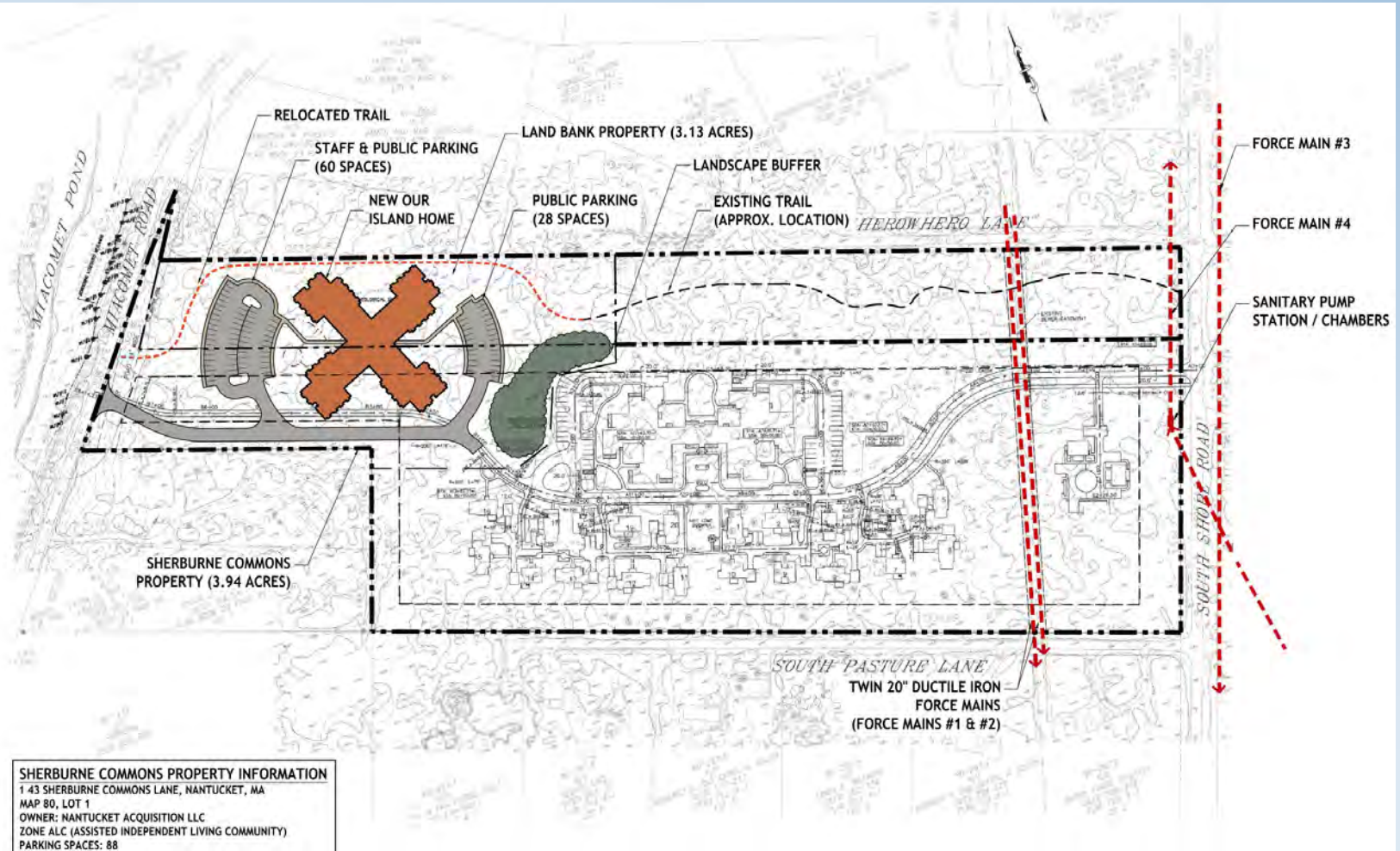




# OUR ISLAND HOME - FEASIBILITY STUDY SHERBURNE COMMONS SITE - SITE PLAN OPTION 2 NANTUCKET, MA

MARCH 2016





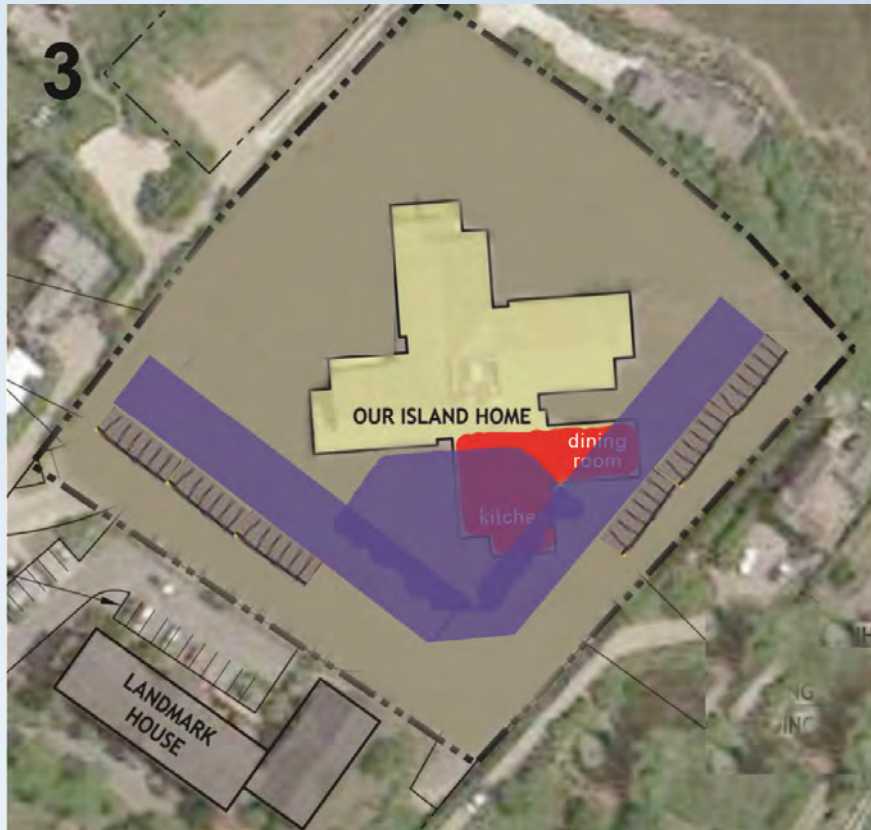
# **OUR ISLAND HOME - FEASIBILITY STUDY** **SHERBURNE COMMONS SITE - SITE PLAN OPTION 1** **NANTUCKET, MA**

MARCH 2016

0' 80' 120' 240'







**From:** [Brian Turbitt](#)  
**To:** [Erika Mooney](#)  
**Subject:** FW: Debt and Tax rate  
**Date:** Friday, March 18, 2016 1:24:34 PM  
**Attachments:** [16-03-17 Nantucket finplan \(3-7-16\) pg 11 consolidated.pdf](#)  
**Importance:** High

---

- Thanks,  
Brian

---

Brian E. Turbitt  
Director of Municipal Finance  
Town of Nantucket  
37 Washington Street  
Nantucket, MA 02554  
Office: 508-228-7200, Ext. 7031  
Fax: 508-228-7218

---

**From:** Brian Turbitt  
**Sent:** Thursday, March 17, 2016 4:29 PM  
**To:** Libby Gibson  
**Subject:** Debt and Tax rate  
**Importance:** High

Hi,

So here is one page which shows our current debt load, the impact by fiscal year, for the new debt from the CIP, and the impact to the tax rates by year, and the dollar value changes against the baseline of FY16. I had to condense this into this format, as the long version is too small to read. First Southwest is updating the plan with some changes I asked for after the review, so this will change. I am hoping that they will be done Monday or Tuesday. I can send a complete version of the report to you for disbursement to the BOS when it comes in. It will also have this condensed page for ease of presentation.

- Thanks,  
Brian

---

Brian E. Turbitt  
Director of Municipal Finance  
Town of Nantucket  
37 Washington Street  
Nantucket, MA 02554  
Office: 508-228-7200, Ext. 7031  
Fax: 508-228-7218

**Town of Nantucket, Massachusetts**

Projected Interest Rate on 2016 Bonds: estimated market rates  
 Projected Interest Rate on 2018 Bonds: 3.50%  
 Projected Interest Rate on 2019 Bonds: 3.50%  
 Projected Interest Rate on 2020 Bonds: 4.00%  
 Projected Interest Rate on 2021 Bonds: 4.00%  
 Projected Interest Rate on 2022 Bonds: 4.00%  
 Projected Interest Rate on 2023 Bonds: 4.50%  
 Projected Interest Rate on 2024 Bonds: 4.50%  
 Projected Interest Rate on 2025 Bonds: 5.00%  
 Projected Interest Rate on 2026 Bonds: 5.00%  
 Projected Interest Rate on 2029 Bonds: 5.00%

**Financing Plan - Tax-Supported Debt Model - ESTIMATED EXEMPT DEBT**

**FY 2016 -2029**

**Exempt General Fund Tax-Supported Debt Only - Excludes Enterprise Fund Debt**

Fiscal Year	A		R						
	Total Existing Exempt Tax-Supported Debt Service	Total Projected Exempt Tax-Supported Debt Service	Tax Rate Impact (Assumes No Growth in Assessed Value)						
			Residential Tax Rate Impact per \$100,000 of AV	Open Space Tax Rate Impact per \$100,000 of AV	Commercial/Industrial/Personal Property Tax Rate Impact per \$100,000 of AV	Impact on Average Single Family Home \$1,784,378	Yearly Increase/ (Decrease) Over 2016 Base Year	Impact on Average Single Family Home (Year Round Resident) \$1,144,544	Yearly Increase/ (Decrease) Over 2016 Base Year
	(page 12)	Equals: A + B + C + D + E + F + G + H + I + J + K + L + M + N + O + P + Q							
2016	6,900,098	6,907,010	33.33	31.94	58.82	594.68		381.44	
2017	6,792,945	6,854,673	33.07	31.70	58.37	590.17	(4.51)	378.55	(2.89)
2018	6,122,323	9,018,073	43.51	41.70	76.79	776.43	181.76	498.02	116.58
2019	4,107,326	11,170,856	53.90	51.65	95.13	961.78	367.11	616.91	235.47
2020	3,977,875	14,623,928	70.56	67.62	124.53	1,259.08	664.41	807.61	426.17
2021	3,863,654	17,477,439	84.33	80.82	148.83	1,504.76	910.09	965.19	583.75
2022	3,731,859	19,480,505	93.99	90.08	165.89	1,677.22	1,082.55	1,075.81	694.37
2023	3,572,039	19,420,862	93.71	89.80	165.38	1,672.09	1,077.41	1,072.52	691.08
2024	3,365,780	21,434,118	103.42	99.11	182.53	1,845.42	1,250.75	1,183.70	802.26
2025	2,312,637	20,479,944	98.82	94.70	174.40	1,763.27	1,168.59	1,131.00	749.57
2026	2,231,416	20,502,067	98.92	94.80	174.59	1,765.17	1,170.50	1,132.23	750.79
2027	2,095,241	23,663,094	114.18	109.42	201.51	2,037.33	1,442.66	1,306.79	925.35
2028	1,775,516	23,369,356	112.76	108.06	199.01	2,012.04	1,417.36	1,290.57	909.13
2029	1,657,005	23,257,065	112.22	107.54	198.05	2,002.37	1,407.70	1,284.37	902.93
2030	1,080,520	25,066,409	120.95	115.91	213.46	2,158.15	1,563.48	1,384.29	1,002.85
2031	715,097	24,715,424	119.25	114.28	210.47	2,127.93	1,533.26	1,364.91	983.47
2032	713,674	24,693,899	119.15	114.19	210.28	2,126.08	1,531.40	1,363.72	982.28
2033	712,251	24,703,483	119.20	114.23	210.37	2,126.91	1,532.23	1,364.25	982.81
2034	710,828	24,551,950	118.46	113.53	209.08	2,113.86	1,519.18	1,355.88	974.44
2035	709,405	24,453,977	117.99	113.08	208.24	2,105.42	1,510.75	1,350.47	969.03
2036	707,982	24,377,438	117.62	112.72	207.59	2,098.83	1,504.16	1,346.24	964.80
2037	706,558	23,985,533	115.73	110.91	204.25	2,065.09	1,470.42	1,324.60	943.16
2038	705,135	23,900,512	115.32	110.52	203.53	2,057.77	1,463.10	1,319.91	938.47
2039	50,154	19,567,211	94.41	90.48	166.63	1,684.69	1,090.01	1,080.60	699.16
2040	48,731	16,063,595	77.51	74.28	136.79	1,383.03	788.36	887.11	505.67
2041	47,308	13,020,933	62.83	60.21	110.88	1,121.07	526.39	719.08	337.64
2042	45,885	11,263,660	54.35	52.08	95.92	969.77	375.10	622.04	240.60
2043	44,462	11,265,812	54.36	52.09	95.94	969.96	375.28	622.15	240.71
2044	43,039	9,154,314	44.17	42.33	77.96	788.16	193.49	505.55	124.11
2045	41,616	9,147,866	44.14	42.30	77.90	787.61	192.93	505.19	123.75
2046	40,193	9,155,343	44.18	42.33	77.96	788.25	193.58	505.60	124.16
2047	38,769	5,840,469	28.18	27.01	49.74	502.85	(91.83)	322.54	(58.90)
2048	37,346	2,957,046	14.27	13.67	25.18	254.59	(340.08)	163.30	(218.14)
2049	35,923	2,419,423	11.67	11.19	20.60	208.31	(386.37)	133.61	(247.83)
Total	59,740,591	567,963,286							

**Assumptions:**

- † For discussion only; not to be used for budgeting purposes.
- † Bonds are structured on a level debt service basis.

**AMENDMENT TO  
LICENSE AGREEMENT**

THIS AMENDMENT TO LICENSE AGREEMENT (this "Amendment") is entered into as of the \_\_\_\_\_ day of March, 2016, by and between the Town of Nantucket, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, having an address of Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554 (the "Licensor"), and James M. Merberg, Trustee of Maine Avenue Trust under Declaration of Trust dated November 1, 2006 filed with Nantucket District Registry of the Land Court as Document No. 118173, having a mailing address of c/o Jack Keefe, 14 Main Street, Dover, Massachusetts 02030 ("Licensee").

WHEREAS, the Licensor and the Licensee entered into a License Agreement, dated as of February 11, 2016 (the "License"), whereby Licensor authorized the Licensee to relocate certain structures on the Licensor's property located at 10 Maine Avenue (the "Licensor's Property") as shown on a plan entitled "Proposed Site Plan, Move off Dwelling from 14 Maine Ave. to 10 Maine Ave." sketched by Blackwell & Associates, which was attached to said License Agreement as Exhibit A;

WHEREAS, the Licensee has revised the plan and the site of the location of the buildings on the Licensor's Property as shown on a plan entitled "Site Plan of Land in Nantucket, MA, Prepared for Maine Avenue Trust, Assessor's Map 60.3.1, Parcels 431, 433, 459 463, #10, 12 & 14 Maine Avenue," dated March 8, 2016, prepared by Blackwell & Associates, Inc. the "Substitute Plan"), a copy of which is attached hereto, and requests the Licensor grant the License pursuant to the location of the structures as shown on the Substitute Plan:

WHEREAS, the parties desire to amend the License to substitute the Plan attached as Exhibit A to the License for the Substitute Plan and all references thereto in the License.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Licensor hereby agrees to substitute the Substitute Plan for the Plan referenced in the License and attached thereto as Exhibit A provided all of the necessary permits and approvals of the appropriate boards of the Town of Nantucket are obtained to relocate the dwelling and structures as shown on the Substitute Plan; and
2. In all other respects, the terms and provisions of the License shall remain unmodified and in full force and effect.

In Witness Whereof, the parties hereto have caused this Amendment to License Agreement to be executed as of the date first set forth above.

LICENSOR:

TOWN OF NANTUCKET,  
By Its Board of Selectmen

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

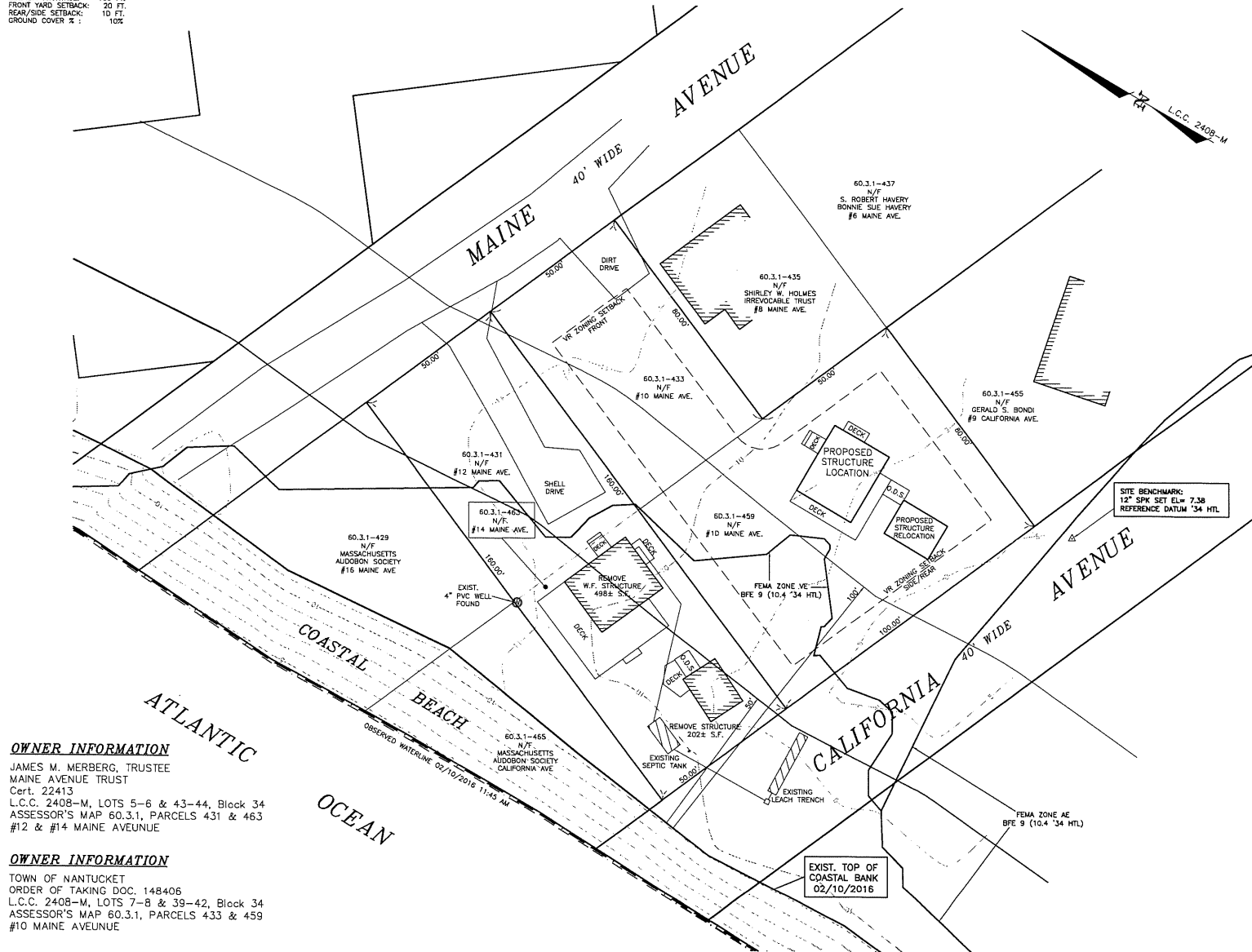
LICENSEE: MAINE AVENUE TRUST

By:\_\_\_\_\_  
James M. Merberg, Trustee

# Proposed Revised Exhibit A

CURRENT ZONING CLASSIFICATION:  
Village Residential (VR)

MINIMUM LOT SIZE: 20,000 S.F.  
MINIMUM FRONTAGE: 100 FT.  
FRONT YARD SETBACK: 20 FT.  
REAR/SIDE SETBACK: 10 FT.  
GROUND COVER %: 10%



## OWNER INFORMATION

JAMES M. MERBERG, TRUSTEE  
MAINE AVENUE TRUST  
Cert. 22413  
L.C.C. 2408-M, LOTS 5-6 & 43-44, Block 34  
ASSESSOR'S MAP 60.3.1, PARCELS 431 & 463  
#12 & #14 MAINE AVENUE

## OWNER INFORMATION

TOWN OF NANTUCKET  
ORDER OF TAKING DOC. 148406  
L.C.C. 2408-M, LOTS 7-8 & 39-42, Block 34  
ASSESSOR'S MAP 60.3.1, PARCELS 433 & 459  
#10 MAINE AVENUE

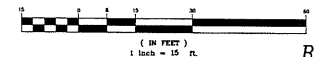
## Site Plan of Land in Nantucket, MA Prepared for MAINE AVENUE TRUST

ASSESSOR'S MAP 60.3.1, PARCELS 431, 433, 459, 463  
#10, 12 & 14 MAINE AVENUE

Scale: 1"= 15' March 8, 2016

**BLACKWELL & ASSOCIATES, Inc.**  
Professional Land Surveyors  
20 TEASDALE CIRCLE  
NANTUCKET, MASS. 02554  
(508) 228-9026

GRAPHIC SCALE







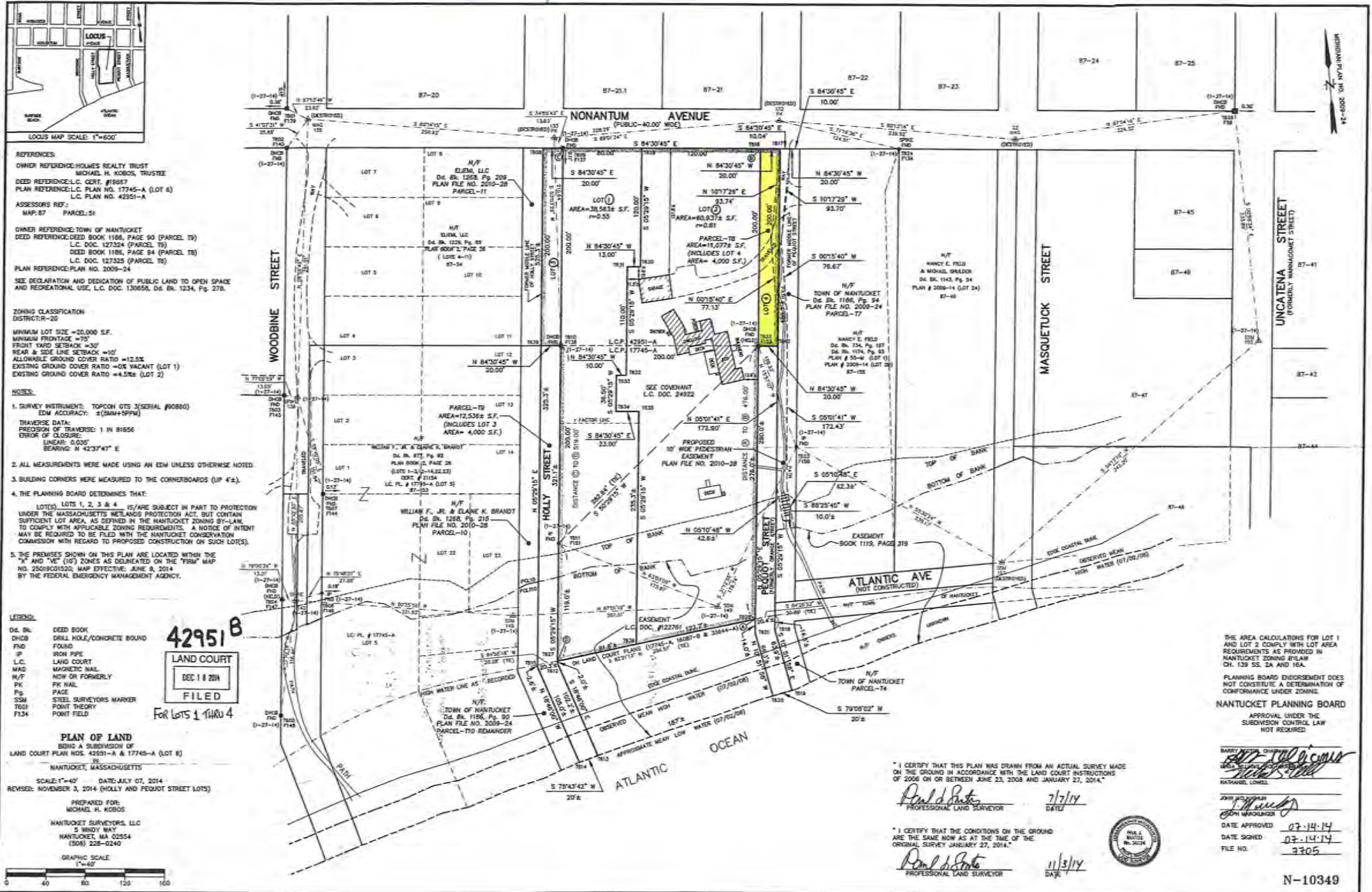
**Real Estate Items - 3/23/2016**

**CONSENT ITEMS**

<u>Parcel</u>	<u>Purchaser</u>	<u>Purchase Price</u>	<u>Town Meeting Vote</u>	<u>Plan No.</u>	<u>Attorney</u>
Lot 4 and Parcel 6, Pequot Street	Michael H. Kobos, Successor Trustee of the Holmes Realty Trust	\$1.00 plus "One Big Beach" Easement	A 108/2008 ATM	Land Court Plan No. 42951B; 2016-19	Sarah F. Alger
Lot 3 and Parcel 9, Holly Street	29 Nonantum LLC	\$1.00 plus "One Big Beach" Easement	A 108/2008 ATM	Land Court Plan No. 42951B; 2016-19	Glidden & Glidden
Parcel A, Unnamed Way off Franklin St	Margaret Ann Ruley	\$2,500	A 103/2015 ATM	2015-86	Julie Fitzgerald
Parcel 1, West Chester Street	Nantucket Islands Land Bank	\$1.00	A 103/2015 ATM	2015-52	Town Counsel

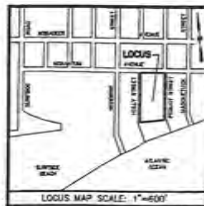


Lot 4, Pequot St.



N-10349

# Parcel 6, Revout St.



REFERENCES:  
OWNER REFERENCE: TOWN OF NANTUCKET  
DEED REFERENCE: DEED BOOK 1186, PAGE 90 (PARCEL 79)  
L.C. DOC. 127324 (PARCEL 79)  
DEED BOOK 1156, PAGE 84 (PARCEL 78)  
L.C. DOC. 127325 (PARCEL 78)  
PLAN REFERENCE: PLAN NO. 2009-24  
SEE DECLARATION AND DEDICATION OF PUBLIC LAND TO OPEN SPACE AND RECREATIONAL USE, L.C. DOC. 130558, DE. BK. 1234, PG. 278.  
LOTS 1 THROUGH 4, SEE L.C. PLAN NO. 42951-8.

ZONING CLASSIFICATION  
DISTRICT R-20  
MINIMUM LOT SIZE = 20,000 S.F.  
MINIMUM FRONTAGE = 75'  
FRONT YARD SETBACK = 30'  
REAR & SIDE SETBACK = 10'  
ALLOWABLE GROUND COVER RATIO = 12.5%

LEGEND:  
DEED BOOK  
DRILL HOLE/CONCRETE BOUND  
FOUND  
IRON PIPE  
LAND COURT  
MAGNETIC NAIL  
NOW OR FORMERLY  
P.C. NAIL  
PAGE  
SDM  
STEEL SURVEYORS MARKER

PLAN OF LAND  
IN  
NANTUCKET, MASSACHUSETTS  
SCALE: 1"=40' DATE: FEBRUARY 19, 2016

PREPARED FOR:  
TOWN OF NANTUCKET  
NANTUCKET SURVEYORS, LLC  
5 WHITTY WAY  
NANTUCKET, MA 02554  
(508) 228-0240

GRAPHIC SCALE  
1"=40'



NANTUCKET REGISTRY OF DEEDS  
Date: February 19, 2016  
Time: 11:44 AM  
Plan BK. 2016 PG. 19  
Plan File:  
Sheet 1 of 1  
RESERVED FOR REGISTRY USE ONLY



REF.: CHAP. 41, SEC. 81-K G.L.  
I CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

*Paul J. Bates* 2/19/16  
PROFESSIONAL LAND SURVEYOR DATE



\* I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.  
*Paul J. Bates* 2/19/16  
PROFESSIONAL LAND SURVEYOR DATE

N-10349



lot 3, Holly St



REFERENCES:  
OWNER REFERENCE: HOMES REALTY TRUST  
MICHAEL H. KOBOS, TRUSTEE  
DEED REFERENCE: L.C. CERT. #5667  
PLAN REFERENCE: L.C. PLAN NO. 17745-A (LOT 6)  
L.C. PLAN NO. 42951-A  
ASSESSORS REF:  
MAP: 87 PARCEL 51  
OWNER REFERENCE: TOWN OF NANTUCKET  
DEED REFERENCE: DEED BOOK 1186, PAGE 90 (PARCEL 10)  
L.C. DOC. 127324 (PARCEL 10)  
DEED BOOK 1186, PAGE 94 (PARCEL 10)  
L.C. DOC. 127325 (PARCEL 10)  
PLAN REFERENCE: PLAN NO. 2009-24  
SEE DECLARATION AND DEDICATION OF PUBLIC LAND TO OPEN SPACE AND RECREATIONAL USE, L.C. DOC. 130658, Dd. Bk. 1234, Pg. 278.

ZONING CLASSIFICATION  
DISTRICT-20  
MINIMUM LOT SIZE = 20,000 S.F.  
MINIMUM FRONTAGE = 75'  
FRONT YARD SETBACK = 30'  
REAR & SIDE YARD SETBACK = 10'  
ALLOWABLE GROUND COVER RATIO = 12.5%  
EXISTING GROUND COVER RATIO = 0% VACANT (LOT 1)  
EXISTING GROUND COVER RATIO = 4.52% (LOT 2)

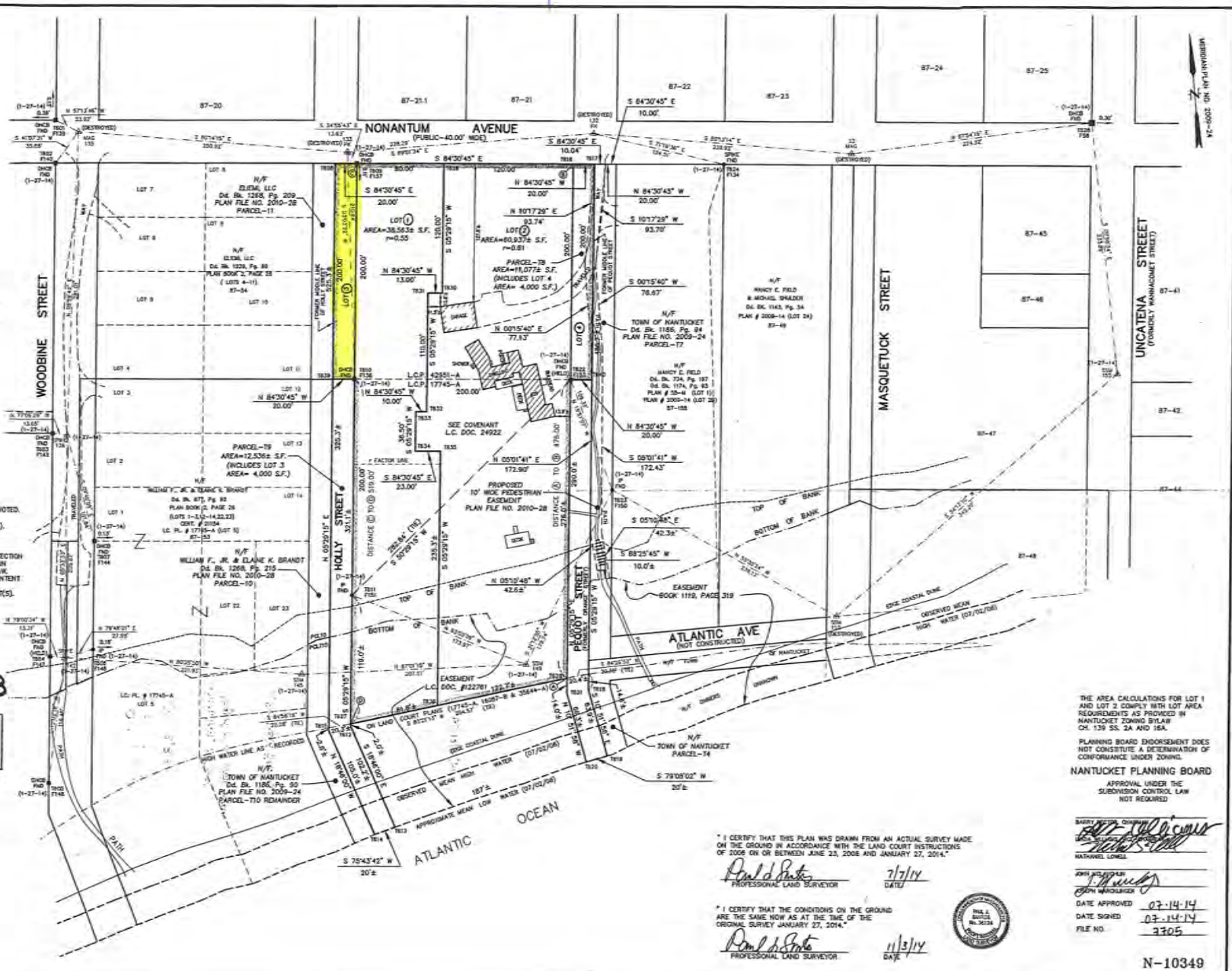
NOTES:  
1. SURVEY INSTRUMENT: TOPCON GTS-3 (SERIAL #00600)  
EDM ACCURACY:  $\pm(5\text{mm} + 5\text{ppm})$   
TRANSVERSE DATA:  
PRECISION OF TRAVERSE: 1 IN 61656  
ERROR OF CLOSURE:  
LINEAR: 0.035'  
BEARING: N 42°37'47" E  
2. ALL MEASUREMENTS WERE MADE USING AN EDM UNLESS OTHERWISE NOTED.  
3. BUILDING CORNERS WERE MEASURED TO THE CORNERBOARDS (UP 4").  
4. THE PLANNING BOARD DETERMINES THAT:  
LOTS 1, 2, 3 & 4 ARE SUBJECT IN PART TO PROTECTION UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT, BUT CONTAIN SUFFICIENT LOT AREA, AS DEFINED IN THE NANTUCKET ZONING BY-LAW, TO COMPLY WITH APPLICABLE ZONING REQUIREMENTS. A NOTICE OF INTENT MAY BE REQUIRED TO BE FILED WITH THE NANTUCKET CONSERVATION COMMISSION WITH REGARD TO PROPOSED CONSTRUCTION ON SUCH LOTS.  
5. THE PREMISES SHOWN ON THIS PLAN ARE LOCATED WITHIN THE "Y" AND "N" LOT ZONES AS DELINEATED ON THE "FORM" MAP NO. 25015001200, MAP EFFECTIVE: JUNE 9, 2014 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

LEGEND:  
Dd. Bk. DEED BOOK  
CHGB. DRILL HOLE/CONCRETE BOUND  
FND. FOUND  
IP. IRON PIPE  
L.C. LAND COURT  
MA2. MAGNETIC NAIL  
N/F. NAIL OR FORMERLY  
PK. PILE  
Pg. PAGE  
SSM. STEEL SURVEYORS MARKER  
TSD. TOWN SURVEYORS MARKER  
F134. POINT FIELD

PLAN OF LAND  
BEING A SUBDIVISION OF  
LAND COURT PLAN NO. 42951-A & 17745-A (LOT 6)  
NANTUCKET, MASSACHUSETTS  
SCALE: 1"=40' DATE: JULY 07, 2014  
REVISED: NOVEMBER 3, 2014 (HOLLY AND PEQUOT STREET LOTS)

PREPARED FOR:  
MICHAEL H. KOBOS  
NANTUCKET SURVEYORS, LLC  
3 NANCY WAY  
NANTUCKET, MA 02554  
(508) 229-0240

GRAPHIC SCALE:  
1"=40'



THE AREA CALCULATIONS FOR LOT 1 AND LOT 2 COMPLY WITH LOT AREA REQUIREMENTS AS PROVIDED IN NANTUCKET ZONING BY-LAW CH. 139 SS. 2A AND 16A.  
PLANNING BOARD ENDORSEMENT DOES NOT CONSTITUTE A DETERMINATION OF CONFORMANCE UNDER ZONING.

NANTUCKET PLANNING BOARD  
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

I CERTIFY THAT THIS PLAN WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND IN ACCORDANCE WITH THE LAND COURT INSTRUCTIONS OF 2006 ON OR BETWEEN JUNE 23, 2006 AND JANUARY 27, 2014.

Professional Land Surveyor  
DATE: 7/7/14  
I CERTIFY THAT THE CONDITIONS ON THE GROUND ARE THE SAME NOW AS AT THE TIME OF THE ORIGINAL SURVEY JANUARY 27, 2014.  
Professional Land Surveyor  
DATE: 11/3/14



APPROVED BY:  
DATE APPROVED: 07-14-14  
DATE SIGNED: 07-14-14  
FILE NO.: 2305

N-10349

# Parcel 9, Holly St.



REFERENCES:  
OWNER REFERENCE: HOLMES REALTY TRUST  
MICHAEL H. KOBOS, TRUSTEE  
DEED REFERENCE: L.C. DEED #19887  
PLAN REFERENCE: L.C. PLAN NO. 17745-A (LOT 8)  
L.C. PLAN NO. 42951-A  
ASSESSORS REF.: MAP 87 PARCEL 51  
OWNER REFERENCE: TOWN OF NANTUCKET  
DEED REFERENCE: DEED BOOK 1186, PAGE 90 (PARCEL 79)  
L.C. DOC. 127324 (PARCEL 79)  
DEED BOOK 1186, PAGE 94 (PARCEL 78)  
L.C. DOC. 127333 (PARCEL 78)  
PLAN REFERENCE: PLAN NO. 2009-24  
SEE DECLARATION AND DEDICATION OF PUBLIC LAND TO OPEN SPACE AND RECREATIONAL USE, L.C. DOC. 130638, Dtd. Bk. 1234, Pg. 278, LOTS 1 THROUGH 4, SEE L.C. PLAN NO. 42951-B.

ZONING CLASSIFICATION  
DISTRICTS: R-20  
MINIMUM LOT SIZE = 20,000 S.F.  
MINIMUM FRONTAGE = 75'  
FRONT YARD SETBACK = 30'  
REAR & SIDE LINE SETBACK = 10'  
ALLOWABLE GROUND COVER RATIO = 12.5%

LEGEND:  
Dd. Bk. DEED BOOK  
FND FOUND  
IP IRON PIPE  
L.C. LAND COURT  
MAG. MAGNETIC NAIL  
N/F NOW OR FORMERLY  
P/N PLY NAIL  
Pg. PAGE  
SDM STEEL SURVEYORS MARKER

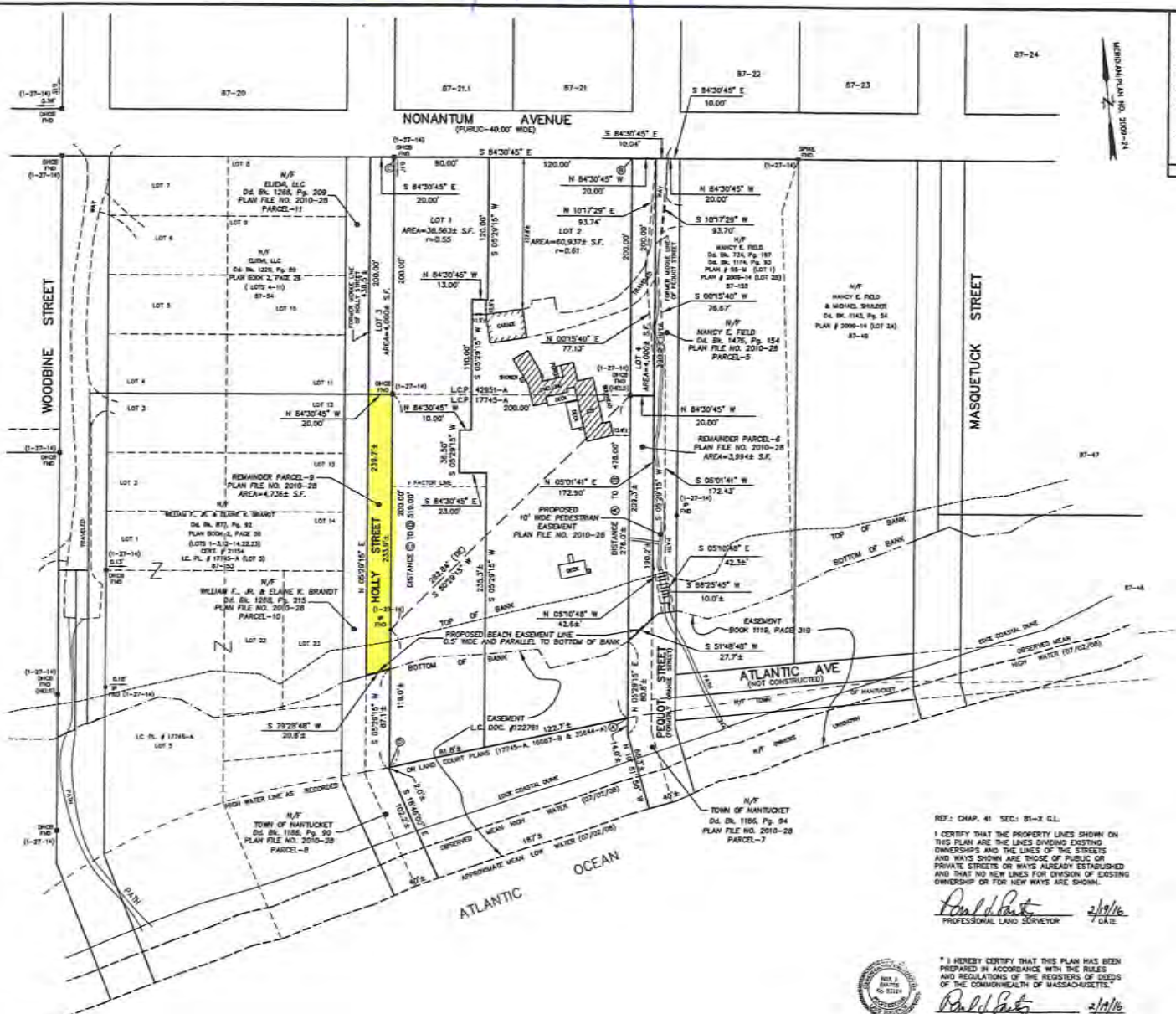
## PLAN OF LAND

IN NANTUCKET, MASSACHUSETTS

SCALE: 1"=40' DATE: FEBRUARY 19, 2016

PREPARED FOR:  
TOWN OF NANTUCKET  
NANTUCKET SURVEYORS, LLC  
5 WINDY WAY  
NANTUCKET, MA 02554  
(508) 228-0240

GRAPHIC SCALE



REF: CHAP. 41 SEC. 18-X G.L.

I CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIP AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

*Donald R. Butts* 2/19/16  
PROFESSIONAL LAND SURVEYOR DATE



\* I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERED SURVEYORS OF THE COMMONWEALTH OF MASSACHUSETTS.  
*Donald R. Butts* 2/19/16  
PROFESSIONAL LAND SURVEYOR DATE

NANTUCKET REGISTRY OF DEEDS  
Date: February 23, 2016  
Time: 11:41 AM  
Plan No. 2016 PD 19  
Plan File:  
Attest: *Janice A. Ferreira* Register  
Sheet 1 of 1  
RESERVED FOR REGISTRY USE ONLY



2016 NANTUCKET  
Bk. Pg. 0 Page 0  
Doc. PLAN 2025018 11:48 AM

N-10349



Taking Parcel A off Franklin St

Planning Board approval not required under the Subdivision Control Law.

Nantucket Planning Board

*[Signature]*

Date: 10-15-15

File No. 7885

Town of Nantucket  
Board of Selectmen

*[Signature]*

Date



2015 00000000  
Bk: Pg: 0 Page: 0  
Doc: PLAN 10/30/2015 03:18 PM

I certify this plan has been prepared in accordance with the Rules and Regulations of the Registers of Deeds of the Commonwealth of Massachusetts.

*[Signature]* 9/11/2015  
Professional Land Surveyor Date



NANTUCKET REGISTRY OF DEEDS

Date: 10/30/2015

Time: 3:18 PM

Plan Book Page

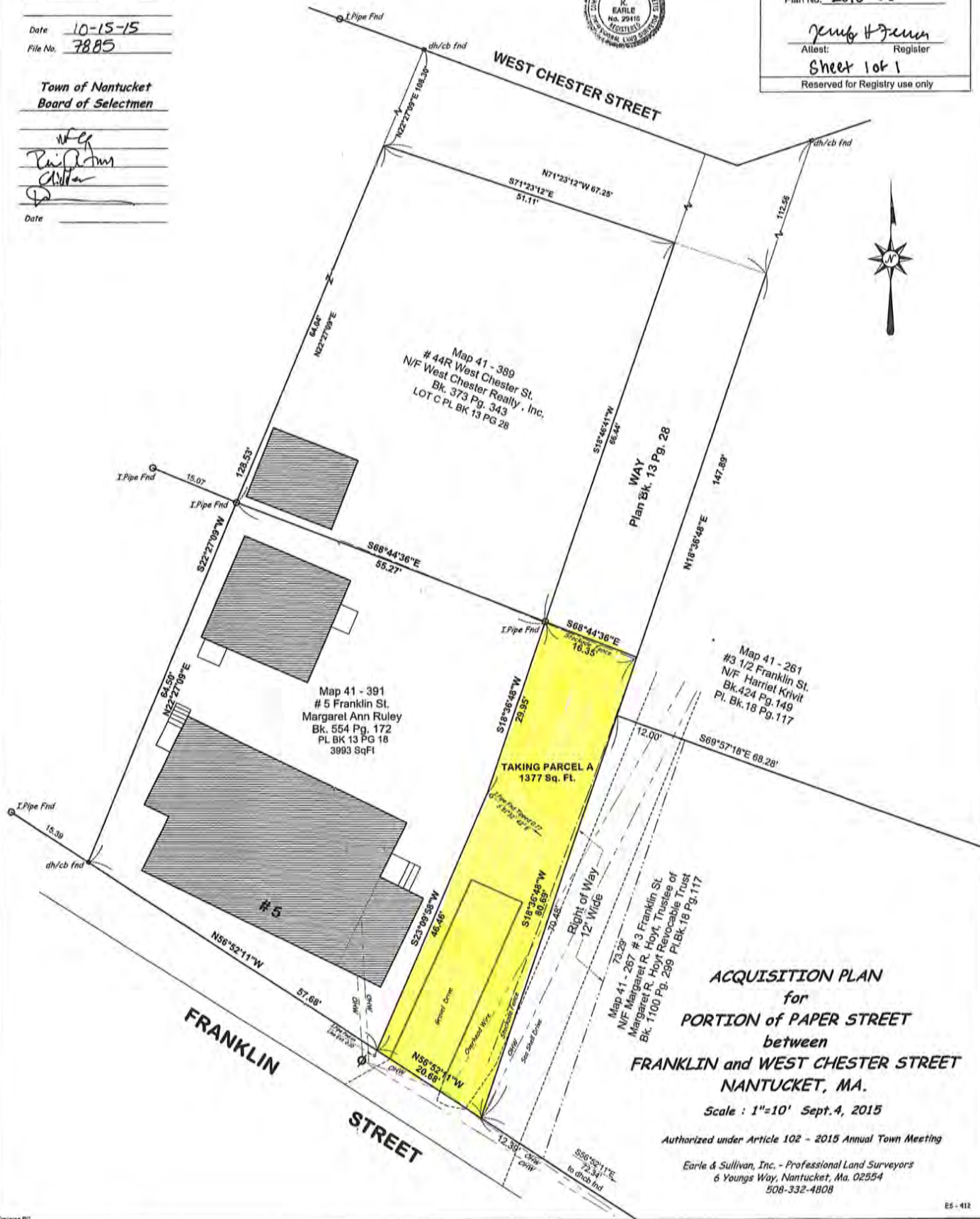
Plan File

Plan No. 2015-86

*[Signature]*  
Attest: Register

Sheet 1 of 1

Reserved for Registry use only



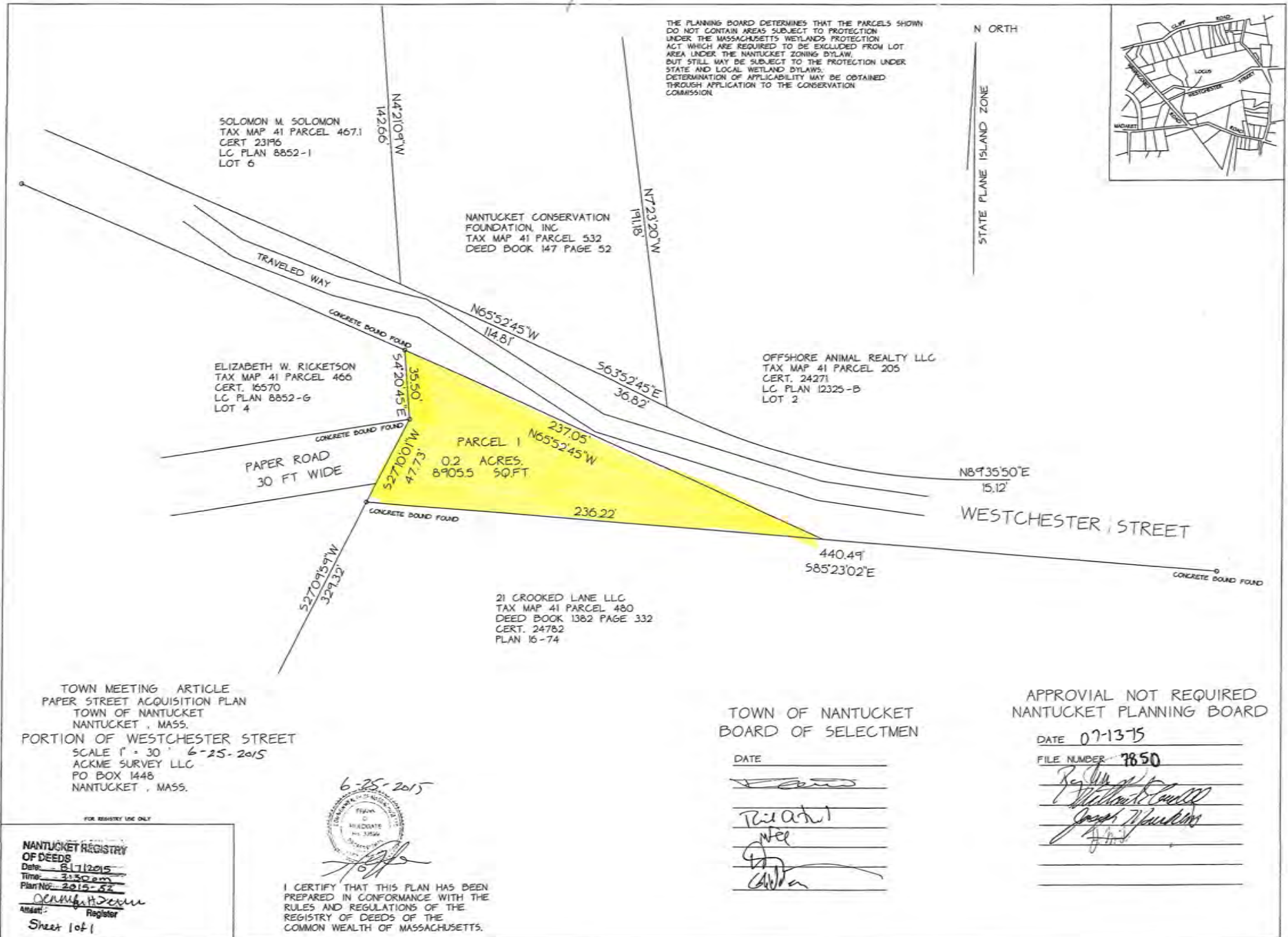
ACQUISITION PLAN  
for  
PORTION of PAPER STREET  
between  
FRANKLIN and WEST CHESTER STREET  
NANTUCKET, MA.

Scale : 1"=10' Sept. 4, 2015

Authorized under Article 102 - 2015 Annual Town Meeting

Earle & Sullivan, Inc. - Professional Land Surveyors  
6 Youngs Way, Nantucket, Ma. 02554  
508-332-4808

# Parcel 1, Westchester St



## **GRANT OF EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, Michael H. Kobos, Successor Trustee of the Holmes Realty Trust under Declaration of Trust dated January 25, 2001 filed with Nantucket Registry District of the Land Court as Document No. 92356, of 29 Mattison Drive, Concord, Massachusetts 01742 (the "Grantor"), in consideration of One Dollar (\$1.00) paid and in further consideration of a grant of certain land in said Nantucket shown as Lot 4, Pequot Street on Land Court Plan No. 42951B and "Remainder Parcel 6," Pequot Street shown on a plan entitled "Plan of Land in Nantucket, Massachusetts," dated February 19, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket County Registry of Deeds as Plan No. 2016-19 ("Plan No. 2016-19" and "Easement Plan") to be conveyed to the Grantor by the afore-referenced Grantee by Deed filed and recorded simultaneously herewith, do hereby GRANT to the Town of Nantucket (the "Town"), a body politic of the Commonwealth of Massachusetts, having offices at 16 Broad Street, Nantucket, Massachusetts 02554, acting by and through its Board of Selectmen (the "Grantee") with QUITCLAIM COVENANTS, the following rights, title and interests:

1. A perpetual easement coextensive with and limited to the Easement Area shown as "Proposed Beach Easement Line 0.5' Wide and Parallel to Bottom of Bank" in Nantucket, Massachusetts," on Plan No. 2016-19, a copy of which is attached hereto and incorporated herein of Grantor's Lands ("Easement Plan"), upon the commencement of erosion of the Grantor's Land such that (a) the mean high water mark meets the lowest point of the coastal bank on the Grantor's Land or (b) when the coastal bank is altered through a natural phenomena, i.e. a storm, such that the lowest elevation of the coastal bank or the coastal dune is now located within the boundaries of the Grantor's Land, whichever is the earlier to occur. The terms "Easement Area" and "Grantor's Land," as well as other terms used in this Grant of Easement, are defined below in Paragraph 2. The scope of the affirmative perpetual easement herein granted is more fully defined, limited, and subject to the conditions and covenants set forth in the following paragraphs.

2. Definitions for the purposes of this Grant of Easement:

"Grantor's Land" shall mean certain parcels of land shown as Lot 2, Nonantum Avenue, on Land Court Plan No. 42951B and the above-referenced Lot 4 and Remainder Parcel 6, Pequot Street, situated in the Town and County of Nantucket, Massachusetts, and being the land described in a Deed filed with said Registry District of the Land Court as Document No. 92355 and noted on Certificate of Title No. 19867 and on a Deed recorded and filed simultaneously herewith.

"coastal bank" shall mean the seaward face or side of any elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland.

"coastal dune" shall mean any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash, including without limitation vegetated areas of American beach grass or other natural beach plants serving to build dunes in dune fields between the landward edge of unvegetated sand and the seaward face or side of the

coastal bank. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.



“Easement Area” shall initially mean that part or portion of Grantor’s Land lying inland of the mean low water line up to and including: (i) the point of the bottom of the coastal bank, or (ii) any coastal dunes, which is the area between the bottom of the bank and the top of the bank, as shown on the Easement Plan, to the point where such coastal dunes terminate and the remainder of Grantor’s Land begins, as the case may be, and then to the mean low water line, the coastal bank and the coastal dunes as they may exist from time to time. To the extent that erosion, accretion, drifting sand, avulsion or other natural phenomena alter the mean low water line, the coastal bank or the coastal dune, the Easement Area shall be deemed correspondingly altered for purposes of this Grant of Easement. The Easement Area is shown on the Easement Plan attached hereto and incorporated herein.

“Coastal Conservation Land” shall mean that ocean-front land, contiguous to Grantor’s Land, now or hereafter owned by the Town or by the Nantucket Islands Land Bank, a government body established for the purpose of land conservation (see, Chapter 669 of the Massachusetts Acts of 1983, as amended), and held for the purpose of preserving the unique natural littoral environment of Nantucket for enjoyment by the general public, and for protecting the scenic and ecological character of the Nantucket shore.

“Commercial Activities” shall mean any activity or event where money is paid to an individual or business entity for services rendered within the Easement Area. By way of illustration only and without limitation, the erection or use of any permanent or temporary structure, kiosk, dock, mooring, stand, cart, sign for advertisement, or other real or personal property, fixtures, or equipment primarily for the purpose of, or incidental or accessory thereto, manufacturing, selling, leasing or otherwise providing from that specific structure or arising from such use any property, good, product or service.

“conservation” and “recreation,” and all derivations therefrom, shall have the general meanings and uses given to those terms by Internal Revenue Code, Section 170(h), and the regulations promulgated thereunder.

“mean high water line” shall mean the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“mean low water line” shall mean the line where the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“intertidal areas” shall mean the area upland of the mean low water line and seaward of the mean high water line, subject to tidal action.

“Maintenance Obligation” shall mean the ongoing and continuous obligation and duty to adequately patrol, maintain and police (that is, supervise, clean, and maintain order, but not to be required to provide regular patrolling by law enforcement officers) environmental resources in

accordance with the Nantucket Beach Management Plan as the same may be amended from time to time and State and local law, and periodically to inspect the Easement Area.

3. The Grantee and the general public shall have the right to enter upon and use the Easement Area exclusively for conservation and recreational purposes for which beaches are used on Nantucket (with the exception of the vehicular uses that are provided in paragraph 4), but not Commercial Activities. These purposes and uses include, by way of illustration and without limitation, educational uses, swimming, fishing, surfboarding, snorkeling, sunbathing, strolling, walking, hiking, wildlife observation, picnicking, scenic viewing, normal and usual beach recreational activities and games, and other similar or appropriate and reasonable recreational outdoor activities and uses as the Grantee, shall determine from time to time, provided the said similar uses shall have been approved in writing by the Board of Selectmen of the Town of Nantucket and notice of such approval is duly published in a newspaper of general circulation in the Town of Nantucket. The Grantee shall regulate the hours and the scope and nature of the permitted uses and activities in accordance with the Grantee's standard beach-management practices in effect for the beaches of Nantucket as found in the Town of Nantucket Beach Management Plan, as adopted by the Nantucket Board of Selectman June 1, 2005 and "Regulations for the Use of Town-Owned Beaches", said regulations effective August 1, 2003 as amended August 4, 2004 as may be amended from time to time, and further the Grantee may grant special permits, from time to time, with the prior written approval from the Grantor, for such other uses and activities and for extended hours, from time to time, as may be provided for by such duly adopted rules, regulations and/or bylaws. In adopting such rules, regulations and/or bylaws, and in issuing special permits pursuant thereto, the Grantee (together with any applicable departments or other divisions, boards, bodies, agencies, officials or agents of the Town) shall use reasonable efforts to minimize reasonably foreseeable adverse effects of such rules, regulations and/or bylaws and permits proposed to be issued upon the reasonable peaceful enjoyment of the Grantor's Land lying outside the Easement Area and upon the Easement Area and the Town shall use reasonable efforts to prohibit any Commercial Activities within the Easement Area and in any way compromise the liability protection now afforded to Grantor by M.G.L. c. 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C. Notwithstanding the foregoing, no member of the general public shall have any right to enter upon, travel over or use those portions of the Easement Area consisting of coastal dunes except with the prior written consent of Grantor or Grantor's heirs, executors, administrators, legal representatives, successors and/or assigns. Notwithstanding the foregoing, the Town shall have the right to enter upon, travel over or otherwise use those portions of the Easement Area consisting of coastal dunes as necessary to perform its Maintenance Obligation.

4. Notwithstanding the uses and activities set forth in paragraph 3 above, the Grantee shall not allow access and use of recreational vehicles in the Easement Area except as provided for herein below. **Vehicular access and use shall be prohibited subject to such rules, regulations and bylaws previously adopted by the Grantee and now existing or hereafter adopted by the Grantee which prohibit vehicular access.** The foregoing sentences shall not limit the official use of vehicles of the Town, its agencies or other governmental entities.

5. Notwithstanding the provisions of paragraphs 3 and 4 above, all movable or fixed structures and signage indicating the limits and/or access to the Easement Area shall be

prohibited throughout the Easement Area, except constructed steps to ascend and descend the coastal bank, and Grantor and/or Grantee may erect or maintain wire or snow fencing, signage or the like along the seaward edge of the coastal bank as may reasonably be warranted to protect the coastal bank and coastal dune or any species listed by any applicable state or federal law or regulation as endangered or threatened so as to advance the conservation purposes for which this Easement is being granted, without unreasonably frustrating the recreational purposes of this Easement. If any structure(s) mandated under applicable state or federal law or regulation frustrate the purposes for which this Grant of Easement is being granted, such structures may be maintained only for as long as is legally required and the party that caused such structure(s) to be placed on the Easement Area shall be responsible for and shall remove such structures(s) within a reasonable period after such time.

6. In addition to any other duties and obligations, the Town shall have the ongoing and continuous obligation and duty to fulfill its Maintenance Obligation and to reasonably ensure that persons granted access pursuant to this easement fully comply with Massachusetts, local and federal laws protecting coastal areas and the use of this beach. Any member(s) of the public who violate(s) the duly adopted rules, regulations and/or bylaws or who refuse to cease and desist from any proscribed conduct, acts or omissions to do or perform anything required to conform to the same may be cited in accordance with said rules, regulations and/or bylaws. The Town may remove from the Easement Area any individual who violates any said rule, regulation and/or bylaw. Further, when issuing any permits pursuant to such rules, regulations and/or bylaws, the Town shall impose such reasonable conditions and restrictions that may be reasonably necessary to assure the Grantor the reasonable peaceful enjoyment of Grantor's Land lying outside the Easement Area.

7. This Grant of Easement shall be binding upon and inure to the benefit of the Grantor and his heirs, executors, administrators, legal representatives, successors and assigns and this Grant of Easement shall be binding upon and inure to the benefit of the Grantee, and the Town and its successors and assigns. The Town's successors and assigns shall be entities eligible to hold qualified conservation restrictions under applicable federal tax law.

8. This Grant of Easement shall be subject to and interpreted pursuant to the laws of the Commonwealth of Massachusetts, and, to the extent applicable to shorefront property, also subject to the laws of the United States of America.

9. Rights retained by the Grantor in and to the Easement Area shall be inferior and incidental to the conservation and recreational use of the Easement Area provided for here, and shall be valid to the extent consistent with this Grant of Easement, and only if exercised so as not to impair the conservation and recreational rights and interests conveyed to the Town hereunder. Said granted and retained rights shall exclude the right to physically alter the Easement Area, by any manual or mechanical means, in any way that would diminish the conservation and recreational purposes of this Grant of Easement. The Grantor and the Town shall have the right to enforce the terms, conditions and provisions hereof by an action in equity brought in the Nantucket Superior Court of the Commonwealth of Massachusetts, and in no other courts or jurisdictions, but although the Nantucket Superior Court shall be the initial forum, nothing herein shall affect or diminish the Town's or Grantor's rights to appeal any decision made by such

Court. The Grantor hereby agrees that no such action shall be commenced unless and until the Grantor shall have given thirty (30) days written notice to the Town, itemizing and detailing with particularity the alleged acts or omissions of the Town deemed to be in material violation of the terms, conditions and/or provisions hereof. In the event that the Town shall have substantially cured such material violations and has taken reasonable measures to assure that uncurable violations shall be avoided in the future, no such actions shall be commenced. However, in no event shall the Town be liable for any monetary damages based upon a violation (material or otherwise) hereof.

10. The Grantee has represented to the undersigned Grantor that the Town has taken or shall promptly take all lawful measures for the Town to accept this Grant of Easement on behalf of itself and the Grantee and to undertake the Maintenance Obligation provided for herein. Grantor represents that he is the rightful lawful owner of the Grantor's Land and the Easement Area and that he possesses the legal authority to grant the rights in real property conveyed to Grantee under this Grant of Easement.

11. No term, covenant or provision of this Grant of Easement, nor the granting or acceptance hereof, shall be construed to be a waiver or release by Grantee or the Town of any right, title or interest it may hold relative to the Easement Area, any permanently submerged land, any coastal dune, any coastal bank or any other land affected by this Grant of Easement.

12. The Grantor shall be absolved from liability claims arising from accidents or injuries occurring to users of the Easement Area in accordance with the provisions of M.G.L. c 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C. Grantor may, in Grantor's discretion, close the Easement Area to public use in the event the landowner liability protection afforded in M.G.L. c. 21, §17C is repealed or altered in a manner which materially increases, in Grantor's reasonable opinion, Grantor's potential liability to public users of the Easement Area, and provided (a) no other statute or law affords Grantor, liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C; or (b) Grantee elects not to provide reasonable insurance coverage or otherwise agrees to hold Grantor harmless against potential liability to public users of the Easement Area, except for liabilities directly caused by or arising from Grantor's gross negligence or willful misconduct. Upon the effective date of another statute or law affording to Grantor, in Grantor's counsel's reasonable opinion, with liability protection substantially similar to that now afforded by M.G.L. c. 21, §17C, or Grantee agreeing to provide reasonable insurance coverage or to otherwise hold Grantor harmless against potential liability to public users of the Easement Area (except for liabilities directly caused by or arising from Grantor's gross negligence or willful misconduct), then Grantor shall promptly open for public use all portions of the Easement Area then closed to the public. The Town shall use reasonable efforts not to compromise in any way the liability protection now afforded to Grantor by M.G.L. c. 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C.

13. Grantor and the Town shall not use the Easement Area in any manner detrimental to the Easement Area or inconsistent with the purpose of this Grant of Easement.

14. Any notices or deliveries required or permitted to be given to the Town pursuant to this instrument shall be in writing and delivered to the Board of Selectmen at Town and County Building, 16 Broad Street, Nantucket, Massachusetts 02554. Any notices or deliveries required or permitted to be given to Grantor pursuant to this instrument shall be in writing and delivered to Grantor at 29 Mattison Drive, Concord, Massachusetts 01742 All such notices shall be delivered by registered or certified mail, postage prepaid and receipt required, or overnight express courier with receipt required. Either the Town or the Grantor may change its address to which any notice is to be delivered by providing the other with reasonable notice of such new address in one of the manners specified above.

[Signatures Follow On Next Page]

In witness whereof, the undersigned Grantor, intending to be legally bound hereby, has affixed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**GRANTOR: HOLMES REALTY TRUST**

\_\_\_\_\_  
Michael H. Kobos, Trustee

**COMMONWEALTH OF MASSACHUSETTS**

, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016 before me, the undersigned notary public, personally appeared Michael H. Kobos, Trustee as aforesaid, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

ACCEPTANCE BY THE TOWN OF NANTUCKET

The undersigned, constituting a majority of the Town of Nantucket Board of Selectmen, hereby acknowledge that at a meeting of the Board of Selectmen held on \_\_\_\_\_, 2016, the forgoing Grant of Easement was accepted pursuant to the authority of Article 108 of the 2008 Annual Town Meeting, a certified copy of which is recorded herewith.

TOWN OF NANTUCKET

By its Board of Selectmen

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of \_\_\_\_\_ 2016, before me, the undersigned notary public personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as members of the Board of Selectmen of the Town of Nantucket, and proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free act and deed of the Board of Selectmen of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

550096/NANT19712/0013

## **PURCHASE AND SALE AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2016

### **1. PARTIES AND MAILING ADDRESSES**

The Town of Nantucket, a municipal corporation acting by and through its Board of Selectmen having an address of 16 Broad Street, Nantucket, Massachusetts 02554, hereinafter called the SELLER, agrees to SELL to Michael H. Kobos, Successor Trustee of the Holmes Realty Trust under Declaration of Trust dated January 25, 2001, filed with the Nantucket Registry District of the Land Court as Document No. 92356, of 29 Mattison Drive, Concord, Massachusetts 01742 hereinafter called the BUYER or PURCHASER, which agrees to BUY, upon the terms hereinafter set forth, the following described premises:

### **2. DESCRIPTION**

The premises are two certain parcels of land on Pequot Street in Nantucket, Massachusetts shown as Lot 4 on Land Court Plan No. 42951B, filed with said Registry District of the Land Court, containing 4,000 square feet more or less; and "Remainder Parcel 6," shown on a plan entitled "Plan of Land in Nantucket, Massachusetts," dated February 19, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket Registry of Deeds as Plan No. 2016-19, containing 3,994 square feet, more or less (the "Property" or "Premises"). The Premises are considered non-conforming lots pursuant to the Town of Nantucket Code. The premises are conveyed together with the right to use the driveway over Lot as shown on Land Court Plan No. 42951B and Lot 5, Pequot Street as shown on plan recorded with said Deeds as Plan No. 2010-28 and on the above-referenced Plan No. 2016-19.

### **3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES**

Intentionally Omitted (Vacant Land).

### **4. TITLE DEED**

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

(a) Any liens for municipal betterments assessed after the date of this agreement;

(b) Laws, by-laws, rules, and regulations, whether federal, state, or local, which affect the use of the Premises, including, but not limited to, rules and regulations of the Nantucket Conservation Commission, Nantucket Zoning By-Law, Nantucket Historic District Commission, Nantucket Building Department, Nantucket Planning Board and Nantucket Board of Health;



- (c) Real estate taxes for the then-current fiscal year and future periods which are not due and payable at the time of delivery of the deed;
- (d) Any fee which may be imposed upon the transaction which is the subject of this agreement by the Nantucket Land Bank Commission, which the Buyer agrees to pay at the time of delivery of the deed;
- (e) Any right, restrictions or easements and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for residential purposes;
- (f) Any public rights existing below mean high water, if applicable;
- (g) A 10' wide pedestrian easement for public access as shown on said Plans;
- (h) Said deed shall contain a reversion clause and a restriction set forth in Section 35 below to require the Premises to be used, and effectively merged with, the BUYER'S existing property known as Lot 2, Nonantum Avenue, Nantucket, Massachusetts, which is a portion of Parcel 5 shown on Town Assessor's Map 87, for residential purposes and permanently restricting any further division or subdivision of the Premises as combined with said existing property.

## 5. PLANS

If said deed refers to a plan necessary to be recorded therewith the BUYER shall deliver such plan with the deed in a form adequate for recording.

## 6. REGISTERED TITLE

In addition to the foregoing, if the title to the said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title to said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

## 7. CONSIDERATION

The agreed consideration for said premises is the payment of One and 00/100 Dollar (\$ 1.00), of which

\$	0.00	was paid with Proposal
\$	1.00	is to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s).
<hr/>		
\$	1.00	Total

And a grant of an Easement (known as the "One Big Beach Easement") from the Buyer to the Seller over Lot 2, Nonantum Avenue, Nantucket, Massachusetts, in substantially the form of the Grant of Easement attached hereto as Exhibit A.

**8. TIME FOR PERFORMANCE; DELIVERY OF DEED**

Said deed is to be delivered to BUYER at the Nantucket County Registry of Deeds at 1:00 P.M. on the 24th day of March, 2016, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

**9. POSSESSION AND CONDITION OF PREMISES**

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they are now, and (b) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

**10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. In the event that such an extension occurs, BUYER agrees to close prior to expiration of the extension period and as soon as reasonably possible after SELLER is prepared to deliver the Premises in compliance with this Agreement. In no event shall SELLER be required to expend more than a total of \$1,000.00 to clear title to and deliver possession of the Premises.

**11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

**12. BUYER'S ELECTION TO ACCEPT TITLE**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.

**13. ACCEPTANCE OF DEED**

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein

contained or expressed, except such as are, by the terms hereof, to be performed after delivery of said deed.

**14. USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

**15. INSURANCE**

Intentionally Omitted (Vacant Land).

**16. ADJUSTMENTS**

A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, § 63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed.

**17. ADJUSTMENT OF UNASSESSED AND UNABATED TAXES**

Intentionally Omitted.

**18. BROKER'S FEE**

Intentionally Omitted.

**19. BROKER'S WARRANTY**

Intentionally Omitted.

**20. DEPOSIT**

All deposits made hereunder shall be held in escrow by Town Treasurer, as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or by court order by a Court having competent jurisdiction.

All deposits made hereunder shall be placed in a non-interest-bearing account. The escrow agent hereunder shall not be liable for any loss suffered with respect to the escrow account or for any action or inaction taken by the escrow agent in good faith with respect to the account or deposit. The escrow agent may resign at any time by transferring the deposit to a successor escrow agent reasonably acceptable to SELLER and BUYER which successor agrees in writing to act as escrow agent. BUYER and SELLER jointly and severally agree to indemnify and hold the escrow agent harmless for any and all costs and expenses, including reasonable attorney's fees, incurred in

connection with any such dispute.

**21. BUYER'S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages which shall be the SELLER'S sole and exclusive remedy at law and in equity for a breach of this agreement.

**22. RELEASE BY HUSBAND OR WIFE**

The SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interest in said premises, if applicable.

**23. BROKER AS PARTY**

Intentionally Omitted.

**24. LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES**

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

**25. WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: NONE. SELLER and SELLER's agents have made no warranties or representations, express or implied, and BUYER is purchasing the premises in it's "AS IS" and without inspection.

**26. MORTGAGE CONTINGENCY CLAUSE**

None.

**27. CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

**28. TITLE STANDARDS AND CONVEYANCING PRACTICES**

Any matter relating to performance of this Agreement which is the subject of a title, practice or ethical standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.

**29. NOTICES**

All notices, demands, consents and approvals required or permitted hereunder shall be deemed to have been duly given if in writing addressed to BUYER or SELLER at:

In the case of BUYER:

Michael H. Kobos, Trustee of  
Holmes Realty Trust  
29 Mattison Drive  
Concord, MA 01742

In the case of SELLER:

Town of Nantucket  
Town and County Building  
16 Broad Street  
Nantucket, MA 02554

With a copy to:

Sarah F. Alger, Esq.  
Two South Water Street  
Nantucket, MA 02554  
(508) 228- 1118  
Facsimile: (508) 228- 8004

With a copy to:

Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street, 12<sup>th</sup> Fl.  
Boston, MA 02110  
(617) 556-0007  
Facsimile: (617) 654-1735

and shall be deemed delivered upon the earliest to occur of (a) receipt or refusal to accept delivery; or (b) upon delivery prior to 5:00 P.M. on any business day by telecopy evidenced by written or printed receipt confirmation, provided a copy of any such notice sent by telecopy is sent also by means of one of the above-described manners of delivery. BUYER and SELLER may change the address to which any notice is to be sent by giving reasonable notice to the other party of such new address in the manner specified.

**30. NO BROKER WARRANTY**

The parties warrant and represent each to the other that there is no broker involved with the transaction to which this agreement pertains. In the event of a breach of the foregoing representation, the breaching party shall indemnify and hold harmless the non-breaching party for all expenses, including attorney's fees, which arise from such breach. The provisions of this section shall survive delivery of the deed hereunder.

**31. SELLER'S CONTINGENCY**

SELLER'S obligations hereunder shall be contingent upon SELLER complying prior to closing with the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of the premises and obtaining all necessary authority to sell the premises, including but not limited to a declaration that the premises constitutes surplus property and an appropriate Town Meeting vote.

**32. VENUE**

The parties hereto agree that all actions on this Agreement shall be brought in the Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Nantucket Division, to the extent that said Court shall have jurisdiction of the subject matter in any such action.

**33. EXTENSION AUTHORITY**

By executing this Agreement, Buyer and Seller hereby grant to their respective attorneys the actual authority to bind them by facsimile for the limited purpose of allowing them to grant extensions, and Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge that either party has disclaimed the authority granted herein to bind them.

**34. CLOSING DOCUMENTS**

BUYER agrees to sign at closing all forms reasonably required by SELLER including without limitation a disclosure statement pursuant to G.L. c. 7C, sec. 38. BUYER agrees to pay the legal costs incurred for preparing a Quitclaim Deed for the Premises.

**35. MERGER OF PREMISES**

BUYER shall consolidate the Premises with the BUYER'S existing abutting lot as set forth in the terms of the Request for Proposals for the "Nantucket Yard Sale Program." This consolidation process includes but is not limited to: obtaining a special permit from the Zoning Board of Appeals to alter any premises which is a nonconforming lot pursuant to Town Code 139-33A(8) and, filing a new perimeter plan with the Nantucket Planning Board and Massachusetts Land Court, if applicable.

BUYER warrants that the Premises shall not be used as separate buildable lots or resold as a separate buildable lot and shall be used for residential uses only. Notwithstanding any provision herein to the contrary, BUYER shall accept the deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce such restrictions and covenants as follows:

"The Grantor's conveyance of the parcel(s) described herein is based in part on the Grantee's warranty and representation to the Grantor that such parcel(s) shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at Lot 2, Nonantum Avenue and being a portion of Parcel 51 shown on Town Assessor's Map 87, previously acquired by Grantee pursuant to the deed filed with said Registry District of the Land Court as Document No. 92355 noted on Certificate of Title No. 19867 (collectively, the "Combined Premises"), and that no part of the Combined Premises

shall be hereafter divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded at the Registry and filed with said Registry District of the Land Court. Accordingly, the parcels hereby granted to the Grantee are conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code and prohibiting the use or conveyance of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcels to the Grantor, if within twenty-four months of the Date of the Deed, the Parcels have not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used or conveyed in a manner inconsistent with these restrictions unless a prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds and filed with said Registry District of the Land Court."

These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body" pursuant to G.L. c. 184, Section 26 such that the restrictions contained herein shall be enforceable for the full term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the grantee hereby appoints the grantor as its agent and attorney in fact to execute and record such notice and further agrees that the grantee shall execute and record such notice upon request. The representations, warranties and provisions of this Section 35 shall survive the delivery of this deed and any conveyance of the Premises, and BUYER shall accept a deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce these covenants.

### **36. CONDITION OF PREMISES**

BUYER acknowledges that prior to the date of this Agreement, BUYER entered the Premises for the purpose of surveying and inspecting the Premises, as necessary for BUYER's financing and purchasing of the Premises and BUYER agrees that BUYER and BUYER's agents fully and completely inspected the Premises, and that BUYER is wholly satisfied with the condition of the Premises. SELLER and SELLER's agents have made no warranties or representations with respect to the Premises, express or implied, on which BUYER has relied except as otherwise set forth in this Agreement. In the event that BUYER and/or BUYER's agents, contractors and employees access the Premises to make any further inspections, assessments, surveys, appraisals or other non-invasive examination of the surface of the Premises, then such access shall be solely at the BUYER's risk, and BUYER shall indemnify and save SELLER harmless from any and all claims, demands, suits or causes of action of any nature whatsoever arising from BUYER's and its agents', contractors' and employees' presence at and/or actions upon or about the Premises, including, without limitation, any claim for personal injury or property damage made by any such person afforded access to the Premises pursuant hereto. BUYER will, and will cause its agents, employees, and contractors, to observe any posted rules and regulations on the Premises.

**37. REPRESENTATION BY COUNSEL**

BUYER and SELLER each acknowledge and agree that they have by counsel of their own choosing or have had an opportunity to be so represented by counsel, and both BUYER and SELLER have read and understand the terms of this Agreement.

**38. ASSIGNMENT AND RECORDING OF AGREEMENT**

BUYER shall not file this Agreement with any Registry of Deeds or recording office. BUYER shall not assign this Agreement to any party without SELLER's prior written consent, which consent SELLER may withhold for any or no reason. In the event BUYER so files or assigns this Agreement without SELLER's prior written consent, then SELLER may elect, upon written notice to BUYER, to terminate this Agreement and to retain any and all deposits.

**39. SEVERABILITY**

If this Agreement shall contain any term or provision which shall be invalid, then the remainder of the Agreement, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law, provided such term or provision does not materially affect the obligations of either of the parties nor the essence of the Agreement.

**SELLER:**  
TOWN OF NANTUCKET  
By its Board of Selectmen:

**ESCROW AGENT:**  
TOWN TREASURER

**BUYER: HOLMES REALTY TRUST**

Michael H. Kobos, Successor Trustee



## QUITCLAIM DEED

### **Lot 4 and Parcel 6, Pequot Street, Nantucket, Massachusetts**

The **TOWN OF NANTUCKET**, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Board of Selectmen (the "Grantor"), in consideration of Less Than One Hundred Dollars (\$100.00), and in further consideration of a beach easement over a portion of Lot 2, Nonantum Avenue, in said Nantucket to be conveyed to the Grantor by the afore-referenced Grantee by Grant of Easement to be recorded herewith, receipt of which is hereby acknowledged, pursuant to the authority of Article 108 voted upon at the 2008 Annual Town Meeting, a certified copy of which is attached hereto, grants to **Michael H. Kobos, Successor Trustee of the Holmes Realty Trust under Declaration of Trust dated January 25, 2001, filed with Nantucket Registry District of the Land Court as Document No. 92356**, of 29 Mattison Drive, Concord, Massachusetts 01742 (the "Grantee"), with QUITCLAIM COVENANTS, two certain plots of land on Pequot Street in Nantucket, Massachusetts, shown as Lot 4, on Land Court Plan No. 42951B filed with said Registry District of the Land Court, containing 4,000 square feet, more or less, and "Remainder of Parcel 6" on a plan of land entitled "Plan of Land in Nantucket, Massachusetts," dated February 19, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket County Registry of Deeds as Plan No. 2016-19, containing 3,994 square feet, more or less. The Premises hereby conveyed are vacant portions of Pequot Street (the "Parcels").

The Premises are conveyed together with an easement over the existing driveway for driveway purposes over Parcel 5, Pequot Street, shown on a plan of land recorded with said Deeds as Plan No. 2010-28. The Grantor hereby reserves over a portion of Lot 4 a non-exclusive easement for public pedestrian purposes to pass and re-pass by foot, over the 10' wide Pedestrian Easement area shown on said Plans.

The Grantor's conveyance of these Parcels is based in part on the Grantee's warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at Lot 2, Nonantum Avenue which is a portion of Parcel 51 shown on Town Assessor's Map 87 previously acquired by Grantee pursuant to a Deed filed with said Registry District of the Land Court as Document No. 92355 noted on Certificate of Title No. 19867 (collectively with the Parcel, the "Combined Premises"), and that no part of such Parcels or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded with said Deeds or filed with said Registry District of the Land Court. Accordingly, the Parcels hereby granted to the Grantee are conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcels and Combined Premises to residential use as defined in

Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcels to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcels have not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds and filed with said Registry District of the Land Court.

By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor's reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body," pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

The undersigned certifies that there has been full compliance with the provisions of G. L. c. 44 §63A.

No deed stamp taxes are due on this conveyance pursuant to G.L. c. 64D, §1.

For Grantor's title, see Order of Taking dated May 27, 2009 recorded with said Deeds in Book 1186, Page 94 and filed with said Registry District of the Land Court as Document No. 127325, and Certificate of Title No. 25961.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]

EXECUTED under seal this \_\_\_\_\_ day of March, 2016.

TOWN OF NANTUCKET  
BY ITS BOARD OF SELECTMEN

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of March, 2016, before me, the undersigned Notary Public, personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as Members of the Board of Selectmen of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Board of Selectmen of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

# SETTLEMENT STATEMENT

Town of Nantucket ("Seller")  
Michael H. Kobos, Successor Trustee of Holmes Realty Trust ("Buyer")  
Lot 4 and Parcel 6, Pequot Street, Nantucket, MA (Property)  
March 24, 2016 (Closing Date)

**Purchase Price:** \$ 1.00

**Less:**

Deposit \$ 1.00

**Plus:**

Payment in Lieu of Tax Adjustment  
3/24/16 -6/30/16 and \$ 38.00  
7/1/16-6/30/17

Reimbursement of Town's Legal Fees \$ 875.00

**Net Amount Due Seller:** \$ 913.00

**Checks:**

Town of Nantucket \$ 913.00

**BUYER: HOLMES REALTY TRUST**

**SELLER: TOWN OF NANTUCKET  
BOARD OF SELECTMEN**

By: \_\_\_\_\_  
Michael H. Kobos, Successor  
Trustee

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **GRANT OF EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, 29 Nonantum LLC, a limited liability company, having a mailing address c/o Glidden & Glidden, P.C., 37 Centre Street, Nantucket, Massachusetts 02554 (the "Grantor"), in consideration of One Dollar (\$1.00) paid and in further consideration of a grant of certain land in said Nantucket shown as Lot 3, Holly Street on Land Court Plan No. 42951B and "Remainder Parcel 9," Holly Street shown on a plan entitled "Plan of Land in Nantucket, Massachusetts," dated February 19, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket County Registry of Deeds as Plan No. 2016-19 ("Plan No. 2016-19" and "Easement Plan") to be conveyed to the Grantor by the afore-referenced Grantee by Deed filed and recorded simultaneously herewith, do hereby GRANT to the Town of Nantucket (the "Town"), a body politic of the Commonwealth of Massachusetts, having offices at 16 Broad Street, Nantucket, Massachusetts 02554, acting by and through its Board of Selectmen (the "Grantee") with QUITCLAIM COVENANTS, the following rights, title and interests:

1. A perpetual easement coextensive with and limited to the Easement Area shown as "Proposed Beach Easement Line 0.5' Wide and Parallel to Bottom of Bank" in Nantucket, Massachusetts," on Plan No. 2016-19, a copy of which is attached hereto and incorporated herein of Grantor's Lands ("Easement Plan"), upon the commencement of erosion of the Grantor's Land such that (a) the mean high water mark meets the lowest point of the coastal bank on the Grantor's Land or (b) when the coastal bank is altered through a natural phenomena, i.e. a storm, such that the lowest elevation of the coastal bank or the coastal dune is now located within the boundaries of the Grantor's Land, whichever is the earlier to occur. The terms "Easement Area" and "Grantor's Land," as well as other terms used in this Grant of Easement, are defined below in Paragraph 2. The scope of the affirmative perpetual easement herein granted is more fully defined, limited, and subject to the conditions and covenants set forth in the following paragraphs.

2. Definitions for the purposes of this Grant of Easement:

"Grantor's Land" shall mean certain parcels of land shown as Lot 1, Nonantum Avenue, on Land court Plan No. 42951-B and the above-referenced Lot 3 and Remainder Parcel 9, Holly Street, situated in the Town and County of Nantucket, Massachusetts, and being the land described in a Deed filed with said Registry District of the Land Court as Document No. 150996 and noted on Certificate of Title No. 25981 and on a Deed recorded and filed simultaneously herewith.

"coastal bank" shall mean the seaward face or side of any elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland.

"coastal dune" shall mean any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash, including without limitation vegetated areas of American beach grass or other natural beach plants serving to build dunes in dune fields between the landward edge of unvegetated sand and the seaward face or side of the

coastal bank. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

“Easement Area” shall initially mean that part or portion of Grantor’s Land lying inland of the mean low water line up to and including: (i) the point of the bottom of the coastal bank, or (ii) any coastal dunes, which is the area between the bottom of the bank and the top of the bank, as shown on the Easement Plan, to the point where such coastal dunes terminate and the remainder of Grantor’s Land begins, as the case may be, and then to the mean low water line, the coastal bank and the coastal dunes as they may exist from time to time. To the extent that erosion, accretion, drifting sand, avulsion or other natural phenomena alter the mean low water line, the coastal bank or the coastal dune, the Easement Area shall be deemed correspondingly altered for purposes of this Grant of Easement. The Easement Area is shown on the Easement Plan attached hereto and incorporated herein.

“Coastal Conservation Land” shall mean that ocean-front land, contiguous to Grantor’s Land, now or hereafter owned by the Town or by the Nantucket Islands Land Bank, a government body established for the purpose of land conservation (see, Chapter 669 of the Massachusetts Acts of 1983, as amended), and held for the purpose of preserving the unique natural littoral environment of Nantucket for enjoyment by the general public, and for protecting the scenic and ecological character of the Nantucket shore.

“Commercial Activities” shall mean any activity or event where money is paid to an individual or business entity for services rendered within the Easement Area. By way of illustration only and without limitation, the erection or use of any permanent or temporary structure, kiosk, dock, mooring, stand, cart, sign for advertisement, or other real or personal property, fixtures, or equipment primarily for the purpose of, or incidental or accessory thereto, manufacturing, selling, leasing or otherwise providing from that specific structure or arising from such use any property, good, product or service.

“conservation” and “recreation,” and all derivations therefrom, shall have the general meanings and uses given to those terms by Internal Revenue Code, Section 170(h), and the regulations promulgated thereunder.

“mean high water line” shall mean the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“mean low water line” shall mean the line where the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“intertidal areas” shall mean the area upland of the mean low water line and seaward of the mean high water line, subject to tidal action.

“Maintenance Obligation” shall mean the ongoing and continuous obligation and duty to adequately patrol, maintain and police (that is, supervise, clean, and maintain order, but not to be

required to provide regular patrolling by law enforcement officers) environmental resources in accordance with the Nantucket Beach Management Plan as the same may be amended from time to time and State and local law, and periodically to inspect the Easement Area.

3. The Grantee and the general public shall have the right to enter upon and use the Easement Area exclusively for conservation and recreational purposes for which beaches are used on Nantucket (with the exception of the vehicular uses that are provided in paragraph 4), but not Commercial Activities. These purposes and uses include, by way of illustration and without limitation, educational uses, swimming, fishing, surfboarding, snorkeling, sunbathing, strolling, walking, hiking, wildlife observation, picnicking, scenic viewing, normal and usual beach recreational activities and games, and other similar or appropriate and reasonable recreational outdoor activities and uses as the Grantee, shall determine from time to time, provided the said similar uses shall have been approved in writing by the Board of Selectmen of the Town of Nantucket and notice of such approval is duly published in a newspaper of general circulation in the Town of Nantucket. The Grantee shall regulate the hours and the scope and nature of the permitted uses and activities in accordance with the Grantee's standard beach-management practices in effect for the beaches of Nantucket as found in the Town of Nantucket Beach Management Plan, as adopted by the Nantucket Board of Selectman June 1, 2005 and "Regulations for the Use of Town-Owned Beaches", said regulations effective August 1, 2003 as amended August 4, 2004 as may be amended from time to time, and further the Grantee may grant special permits, from time to time, with the prior written approval from the Grantor, for such other uses and activities and for extended hours, from time to time, as may be provided for by such duly adopted rules, regulations and/or bylaws. In adopting such rules, regulations and/or bylaws, and in issuing special permits pursuant thereto, the Grantee (together with any applicable departments or other divisions, boards, bodies, agencies, officials or agents of the Town) shall use reasonable efforts to minimize reasonably foreseeable adverse effects of such rules, regulations and/or bylaws and permits proposed to be issued upon the reasonable peaceful enjoyment of the Grantor's Land lying outside the Easement Area and upon the Easement Area and the Town shall use reasonable efforts to prohibit any Commercial Activities within the Easement Area and in any way compromise the liability protection now afforded to Grantor by M.G.L. c. 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C. Notwithstanding the foregoing, no member of the general public shall have any right to enter upon, travel over or use those portions of the Easement Area consisting of coastal dunes except with the prior written consent of Grantor or Grantor's heirs, executors, administrators, legal representatives, successors and/or assigns. Notwithstanding the foregoing, the Town shall have the right to enter upon, travel over or otherwise use those portions of the Easement Area consisting of coastal dunes as necessary to perform its Maintenance Obligation.

4. Notwithstanding the uses and activities set forth in paragraph 3 above, the Grantee shall not allow access and use of recreational vehicles in the Easement Area except as provided for herein below. **Vehicular access and use shall be prohibited subject to such rules, regulations and bylaws previously adopted by the Grantee and now existing or hereafter adopted by the Grantee which prohibit vehicular access.** The foregoing sentences shall not limit the official use of vehicles of the Town, its agencies or other governmental entities.



5. Notwithstanding the provisions of paragraphs 3 and 4 above, all movable or fixed structures and signage indicating the limits and/or access to the Easement Area shall be prohibited throughout the Easement Area, except constructed steps to ascend and descend the coastal bank, and Grantor and/or Grantee may erect or maintain wire or snow fencing, signage or the like along the seaward edge of the coastal bank as may reasonably be warranted to protect the coastal bank and coastal dune or any species listed by any applicable state or federal law or regulation as endangered or threatened so as to advance the conservation purposes for which this Easement is being granted, without unreasonably frustrating the recreational purposes of this Easement. If any structure(s) mandated under applicable state or federal law or regulation frustrate the purposes for which this Grant of Easement is being granted, such structures may be maintained only for as long as is legally required and the party that caused such structure(s) to be placed on the Easement Area shall be responsible for and shall remove such structures(s) within a reasonable period after such time.

6. In addition to any other duties and obligations, the Town shall have the ongoing and continuous obligation and duty to fulfill its Maintenance Obligation and to reasonably ensure that persons granted access pursuant to this easement fully comply with Massachusetts, local and federal laws protecting coastal areas and the use of this beach. Any member(s) of the public who violate(s) the duly adopted rules, regulations and/or bylaws or who refuse to cease and desist from any proscribed conduct, acts or omissions to do or perform anything required to conform to the same may be cited in accordance with said rules, regulations and/or bylaws. The Town may remove from the Easement Area any individual who violates any said rule, regulation and/or bylaw. Further, when issuing any permits pursuant to such rules, regulations and/or bylaws, the Town shall impose such reasonable conditions and restrictions that may be reasonably necessary to assure the Grantor the reasonable peaceful enjoyment of Grantor's Land lying outside the Easement Area.

7. This Grant of Easement shall be binding upon and inure to the benefit of the Grantor and his heirs, executors, administrators, legal representatives, successors and assigns and this Grant of Easement shall be binding upon and inure to the benefit of the Grantee, and the Town and its successors and assigns. The Town's successors and assigns shall be entities eligible to hold qualified conservation restrictions under applicable federal tax law.

8. This Grant of Easement shall be subject to and interpreted pursuant to the laws of the Commonwealth of Massachusetts, and, to the extent applicable to shorefront property, also subject to the laws of the United States of America.

9. Rights retained by the Grantor in and to the Easement Area shall be inferior and incidental to the conservation and recreational use of the Easement Area provided for here, and shall be valid to the extent consistent with this Grant of Easement, and only if exercised so as not to impair the conservation and recreational rights and interests conveyed to the Town hereunder. Said granted and retained rights shall exclude the right to physically alter the Easement Area, by any manual or mechanical means, in any way that would diminish the conservation and recreational purposes of this Grant of Easement. The Grantor and the Town shall have the right to enforce the terms, conditions and provisions hereof by an action in equity brought in the Nantucket Superior Court of the Commonwealth of Massachusetts, and in no other courts or

jurisdictions, but although the Nantucket Superior Court shall be the initial forum, nothing herein shall affect or diminish the Town's or Grantor's rights to appeal any decision made by such Court. The Grantor hereby agrees that no such action shall be commenced unless and until the Grantor shall have given thirty (30) days written notice to the Town, itemizing and detailing with particularity the alleged acts or omissions of the Town deemed to be in material violation of the terms, conditions and/or provisions hereof. In the event that the Town shall have substantially cured such material violations and has taken reasonable measures to assure that incurable violations shall be avoided in the future, no such actions shall be commenced. However, in no event shall the Town be liable for any monetary damages based upon a violation (material or otherwise) hereof.

10. The Grantee has represented to the undersigned Grantor that the Town has taken or shall promptly take all lawful measures for the Town to accept this Grant of Easement on behalf of itself and the Grantee and to undertake the Maintenance Obligation provided for herein. Grantor represents that he is the rightful lawful owner of the Grantor's Land and the Easement Area and that he possesses the legal authority to grant the rights in real property conveyed to Grantee under this Grant of Easement.

11. No term, covenant or provision of this Grant of Easement, nor the granting or acceptance hereof, shall be construed to be a waiver or release by Grantee or the Town of any right, title or interest it may hold relative to the Easement Area, any permanently submerged land, any coastal dune, any coastal bank or any other land affected by this Grant of Easement.

12. The Grantor shall be absolved from liability claims arising from accidents or injuries occurring to users of the Easement Area in accordance with the provisions of M.G.L. c 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C. Grantor may, in Grantor's discretion, close the Easement Area to public use in the event the landowner liability protection afforded in M.G.L. c. 21, §17C is repealed or altered in a manner which materially increases, in Grantor's reasonable opinion, Grantor's potential liability to public users of the Easement Area, and provided (a) no other statute or law affords Grantor, liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C; or (b) Grantee elects not to provide reasonable insurance coverage or otherwise agrees to hold Grantor harmless against potential liability to public users of the Easement Area, except for liabilities directly caused by or arising from Grantor's gross negligence or willful misconduct. Upon the effective date of another statute or law affording to Grantor, in Grantor's counsel's reasonable opinion, with liability protection substantially similar to that now afforded by M.G.L. c. 21, §17C, or Grantee agreeing to provide reasonable insurance coverage or to otherwise hold Grantor harmless against potential liability to public users of the Easement Area (except for liabilities directly caused by or arising from Grantor's gross negligence or willful misconduct), then Grantor shall promptly open for public use all portions of the Easement Area then closed to the public. The Town shall use reasonable efforts not to compromise in any way the liability protection now afforded to Grantor by M.G.L. c. 21, §17C or any revised or replacement statute that affords liability protection which is substantially similar to that now afforded by M.G.L. c. 21, §17C.

13. Grantor and the Town shall not use the Easement Area in any manner detrimental to the Easement Area or inconsistent with the purpose of this Grant of Easement.

14. Any notices or deliveries required or permitted to be given to the Town pursuant to this instrument shall be in writing and delivered to the Board of Selectmen at Town and County Building, 16 Broad Street, Nantucket, Massachusetts 02554. Any notices or deliveries required or permitted to be given to Grantor pursuant to this instrument shall be in writing and delivered to Grantor at c/o Glidden & Glidden, P.C., 37 Centre Street, Nantucket, MA 02554. All such notices shall be delivered by registered or certified mail, postage prepaid and receipt required, or overnight express courier with receipt required. Either the Town or the Grantor may change its address to which any notice is to be delivered by providing the other with reasonable notice of such new address in one of the manners specified above.

[Signatures Follow On Next Page]

In witness whereof, the undersigned Grantor, intending to be legally bound hereby, has affixed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**GRANTOR: 29 NONANTUM LLC**

\_\_\_\_\_  
William F. Brandt, Jr., Manager

COMMONWEALTH OF VIRGINIA

, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016 before me, the undersigned notary public, personally appeared William F. Brandt, Jr., Manager, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

ACCEPTANCE BY THE TOWN OF NANTUCKET

The undersigned, constituting a majority of the Town of Nantucket Board of Selectmen, hereby acknowledge that at a meeting of the Board of Selectmen held on \_\_\_\_\_, 2016, the forgoing Grant of Easement was accepted pursuant to the authority of Article 108 of the 2008 Annual Town Meeting, a certified copy of which is recorded herewith.

TOWN OF NANTUCKET

By its Board of Selectmen

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of \_\_\_\_\_ 2016, before me, the undersigned notary public personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as members of the Board of Selectmen of the Town of Nantucket, and proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free act and deed of the Board of Selectmen of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## **PURCHASE AND SALE AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2016

### **1. PARTIES AND MAILING ADDRESSES**

The Town of Nantucket, a municipal corporation acting by and through its Board of Selectmen having an address of 16 Broad Street, Nantucket, Massachusetts 02554, hereinafter called the SELLER, agrees to SELL to 29 Nonantum LLC, a Massachusetts limited liability company, having a mailing address c/o Glidden & Glidden, P.C., 37 Centre Street, Nantucket, Massachusetts 02554 hereinafter called the BUYER or PURCHASER, which agrees to BUY, upon the terms hereinafter set forth, the following described premises:

### **2. DESCRIPTION**

The premises are two certain parcels of land on Holly Street in Nantucket, Massachusetts shown as Lot 3 on Land Court Plan No. 42951B, filed with Nantucket Registry District of the Land Court, containing 4,000 square feet more or less; and "Remainder Parcel 9," shown on a plan entitled "Plan of Land in Nantucket, Massachusetts," dated February 19, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket Registry of Deeds as Plan No. 2016-19, containing 4,736 square feet, more or less (the "Property" or "Premises"). The Premises are considered non-conforming lots pursuant to the Town of Nantucket Code.

### **3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES**

Intentionally Omitted (Vacant Land).

### **4. TITLE DEED**

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Any liens for municipal betterments assessed after the date of this agreement;
- (b) Laws, by-laws, rules, and regulations, whether federal, state, or local, which affect the use of the Premises, including, but not limited to, rules and regulations of the Nantucket Conservation Commission, Nantucket Zoning By-Law, Nantucket Historic District Commission, Nantucket Building Department, Nantucket Planning Board and Nantucket Board of Health;
- (c) Real estate taxes for the then-current fiscal year and future periods which are not due and payable at the time of delivery of the deed;
- (d) Any fee which may be imposed upon the transaction which is the subject of this

agreement by the Nantucket Land Bank Commission, which the Buyer agrees to pay at the time of delivery of the deed;

(e) Any right, restrictions or easements and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for residential purposes;

(f) Any public rights existing below mean high water, if applicable; and

(g) Said deed shall contain a reversion clause and a restriction set forth in Section 35 below to require the Premises to be used, and effectively merged with, the BUYER'S existing property known as 29 Nonantum Avenue, Nantucket, Massachusetts, which is a portion of Parcel 51 shown on Town Assessor's Map 87, for residential purposes and permanently restricting any further division or subdivision of the Premises as combined with said existing property.

**5. PLANS**

If said deed refers to a plan necessary to be recorded therewith the BUYER shall deliver such plan with the deed in a form adequate for recording.

**6. REGISTERED TITLE**

In addition to the foregoing, if the title to the said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title to said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

**7. CONSIDERATION**

The agreed consideration for said premises is the payment of One and 00/100 Dollar (\$ 1.00), of which

\$	0.00	was paid with Proposal
\$	1.00	is to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s).
<hr/>		
\$	1.00	Total

And a grant of an Easement (known as the "One Big Beach Easement") from the Buyer to the Seller over 29 Nonantum Avenue, Nantucket, Massachusetts, in substantially the form of the Grant of Easement attached hereto as Exhibit A.

**8. TIME FOR PERFORMANCE; DELIVERY OF DEED**

Said deed is to be delivered to BUYER at the Nantucket County Registry of Deeds at 1:00 P.M. on



the 24th day of March, 2016, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

**9. POSSESSION AND CONDITION OF PREMISES**

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they are now, and (b) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

**10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. In the event that such an extension occurs, BUYER agrees to close prior to expiration of the extension period and as soon as reasonably possible after SELLER is prepared to deliver the Premises in compliance with this Agreement. In no event shall SELLER be required to expend more than a total of \$1,000.00 to clear title to and deliver possession of the Premises.

**11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

**12. BUYER'S ELECTION TO ACCEPT TITLE**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.

**13. ACCEPTANCE OF DEED**

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after delivery of said deed.

**14. USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

**15. INSURANCE**

Intentionally Omitted (Vacant Land).

**16. ADJUSTMENTS**

A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, § 63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed.

**17. ADJUSTMENT OF UNASSESSED AND UNABATED TAXES**

Intentionally Omitted.

**18. BROKER'S FEE**

Intentionally Omitted.

**19. BROKER'S WARRANTY**

Intentionally Omitted.

**20. DEPOSIT**

All deposits made hereunder shall be held in escrow by Town Treasurer, as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or by court order by a Court having competent jurisdiction.

All deposits made hereunder shall be placed in a non-interest-bearing account. The escrow agent hereunder shall not be liable for any loss suffered with respect to the escrow account or for any action or inaction taken by the escrow agent in good faith with respect to the account or deposit. The escrow agent may resign at any time by transferring the deposit to a successor escrow agent reasonably acceptable to SELLER and BUYER which successor agrees in writing to act as escrow agent. BUYER and SELLER jointly and severally agree to indemnify and hold the escrow agent harmless for any and all costs and expenses, including reasonable attorney's fees, incurred in connection with any such dispute.

**21. BUYER'S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages which shall be the SELLER'S sole and exclusive remedy at law and in equity for a breach of this agreement.

**22. RELEASE BY HUSBAND OR WIFE**

The SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interest in said premises, if applicable.

**23. BROKER AS PARTY**

Intentionally Omitted.

**24. LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES**

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

**25. WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: NONE. SELLER and SELLER's agents have made no warranties or representations, express or implied, and BUYER is purchasing the premises in it's "AS IS" and without inspection.

**26. MORTGAGE CONTINGENCY CLAUSE**

None.

**27. CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

**28. TITLE STANDARDS AND CONVEYANCING PRACTICES**

Any matter relating to performance of this Agreement which is the subject of a title, practice or ethical standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.

**29. NOTICES**

All notices, demands, consents and approvals required or permitted hereunder shall be deemed to have been duly given if in writing addressed to BUYER or SELLER at:

In the case of BUYER:

29 Nonantum LLC  
c/o Glidden & Glidden, P.C.  
37 Centre Street  
Nantucket, MA 02554

In the case of SELLER:

Town of Nantucket  
Town and County Building  
16 Broad Street  
Nantucket, MA 02554

With a copy to:

Richard J. Glidden, Esq.  
Glidden & Glidden, P.C.  
37 Centre Street  
Nantucket, MA 02554  
(508) 228- 0771  
Facsimile: (508) 228- 6205

With a copy to:

Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street, 12<sup>th</sup> Fl.  
Boston, MA 02110  
(617) 556-0007  
Facsimile: (617) 654-1735

and shall be deemed delivered upon the earliest to occur of (a) receipt or refusal to accept delivery; or (b) upon delivery prior to 5:00 P.M. on any business day by telecopy evidenced by written or printed receipt confirmation, provided a copy of any such notice sent by telecopy is sent also by means of one of the above-described manners of delivery. BUYER and SELLER may change the address to which any notice is to be sent by giving reasonable notice to the other party of such new address in the manner specified.

**30. NO BROKER WARRANTY**

The parties warrant and represent each to the other that there is no broker involved with the transaction to which this agreement pertains. In the event of a breach of the foregoing representation, the breaching party shall indemnify and hold harmless the non-breaching party for all expenses, including attorney's fees, which arise from such breach. The provisions of this section shall survive delivery of the deed hereunder.

**31. SELLER'S CONTINGENCY**

SELLER'S obligations hereunder shall be contingent upon SELLER complying prior to closing with the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of the premises and obtaining all necessary authority to sell the premises, including but not limited to a declaration that the premises constitutes surplus property and an appropriate Town Meeting vote.

**32. VENUE**

The parties hereto agree that all actions on this Agreement shall be brought in the Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Nantucket Division, to the extent that said Court shall have jurisdiction of the subject matter in any such action.

**33. EXTENSION AUTHORITY**

By executing this Agreement, Buyer and Seller hereby grant to their respective attorneys the actual authority to bind them by facsimile for the limited purpose of allowing them to grant extensions, and Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge that either party has disclaimed the authority granted herein to bind them.

**34. CLOSING DOCUMENTS**

BUYER agrees to sign at closing all forms reasonably required by SELLER including without limitation a disclosure statement pursuant to G.L. c. 7C, sec. 38. BUYER agrees to pay the legal costs incurred for preparing a Quitclaim Deed for the Premises.

**35. MERGER OF PREMISES**

BUYER shall consolidate the Premises with the BUYER'S existing abutting lot as set forth in the terms of the Request for Proposals for the "Nantucket Yard Sale Program." This consolidation process includes but is not limited to: obtaining a special permit from the Zoning Board of Appeals to alter any premises which is a nonconforming lot pursuant to Town Code 139-33A(8) and, filing a new perimeter plan with the Nantucket Planning Board and Massachusetts Land Court, if applicable.

BUYER warrants that the Premises shall not be used as separate buildable lots or resold as a separate buildable lot and shall be used for residential uses only. Notwithstanding any provision herein to the contrary, BUYER shall accept the deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce such restrictions and covenants as follows:

"The Grantor's conveyance of the parcel(s) described herein is based in part on the Grantee's warranty and representation to the Grantor that such parcel(s) shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 29 Nonantum Avenue and being a portion of Parcel 51 shown on Town Assessor's Map 87, previously acquired by Grantee pursuant to the deed filed with said Registry District of the Land Court as Document No. 150996 noted on Certificate of Title No. 25981 (collectively, the "Combined Premises"), and that no part of the Combined Premises shall be

hereafter divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded at the Registry and filed with said Registry District of the Land Court. Accordingly, the parcels hereby granted to the Grantee are conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code and prohibiting the use or conveyance of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcels to the Grantor, if within twenty-four months of the Date of the Deed, the Parcels have not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used or conveyed in a manner inconsistent with these restrictions unless a prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds and filed with said Registry District of the Land Court."

These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body" pursuant to G.L. c. 184, Section 26 such that the restrictions contained herein shall be enforceable for the full term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the grantee hereby appoints the grantor as its agent and attorney in fact to execute and record such notice and further agrees that the grantee shall execute and record such notice upon request. The representations, warranties and provisions of this Section 35 shall survive the delivery of this deed and any conveyance of the Premises, and BUYER shall accept a deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce these covenants.

### **36. CONDITION OF PREMISES**

BUYER acknowledges that prior to the date of this Agreement, BUYER entered the Premises for the purpose of surveying and inspecting the Premises, as necessary for BUYER's financing and purchasing of the Premises and BUYER agrees that BUYER and BUYER's agents fully and completely inspected the Premises, and that BUYER is wholly satisfied with the condition of the Premises. SELLER and SELLER's agents have made no warranties or representations with respect to the Premises, express or implied, on which BUYER has relied except as otherwise set forth in this Agreement. In the event that BUYER and/or BUYER's agents, contractors and employees access the Premises to make any further inspections, assessments, surveys, appraisals or other non-invasive examination of the surface of the Premises, then such access shall be solely at the BUYER's risk, and BUYER shall indemnify and save SELLER harmless from any and all claims, demands, suits or causes of action of any nature whatsoever arising from BUYER's and its agents', contractors' and employees' presence at and/or actions upon or about the Premises, including, without limitation, any claim for personal injury or property damage made by any such person afforded access to the Premises pursuant hereto. BUYER will, and will cause its agents, employees, and contractors, to observe any posted rules and regulations on the Premises.

**37. REPRESENTATION BY COUNSEL**

BUYER and SELLER each acknowledge and agree that they have by counsel of their own choosing or have had an opportunity to be so represented by counsel, and both BUYER and SELLER have read and understand the terms of this Agreement.

**38. ASSIGNMENT AND RECORDING OF AGREEMENT**

BUYER shall not file this Agreement with any Registry of Deeds or recording office. BUYER shall not assign this Agreement to any party without SELLER's prior written consent, which consent SELLER may withhold for any or no reason. In the event BUYER so files or assigns this Agreement without SELLER's prior written consent, then SELLER may elect, upon written notice to BUYER, to terminate this Agreement and to retain any and all deposits.

**39. SEVERABILITY**

If this Agreement shall contain any term or provision which shall be invalid, then the remainder of the Agreement, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law, provided such term or provision does not materially affect the obligations of either of the parties nor the essence of the Agreement.

**SELLER:**  
TOWN OF NANTUCKET  
By its Board of Selectmen:

**ESCROW AGENT:**  
TOWN TREASURER

**BUYER: 29 NONANTUM LLC**

William F. Brandt, Jr., Manager



## QUITCLAIM DEED

### **Lot 3 and Remainder Parcel 9, Holly Street, Nantucket, Massachusetts**

The **TOWN OF NANTUCKET**, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Board of Selectmen (the “Grantor”), in consideration of Less Than One Hundred Dollars (\$100.00), and in further consideration of a beach easement over a portion of 29 Nonantum Avenue, in said Nantucket to be conveyed to the Grantor by the afore-referenced Grantee by Grant of Easement to be recorded herewith, receipt of which is hereby acknowledged, pursuant to the authority of Article 108 voted upon at the 2008 Annual Town Meeting, a certified copy of which is attached hereto, grants to **29 Nonantum LLC**, a Massachusetts limited liability company, having a mailing address c/o Glidden & Glidden, P.C. 37 Centre Street, Nantucket, Massachusetts 02554 (the “Grantee”), with QUITCLAIM COVENANTS, two certain plots of land on Holly Street in Nantucket, Massachusetts, shown as Lot 3, on Land Court Plan No. 42951B filed with Nantucket Registry District of the Land Court, containing 4,000 square feet, more or less, and “Remainder of Parcel 9” on a plan of land entitled “Plan of Land in Nantucket, Massachusetts,” dated February 19, 2016, prepared by Nantucket Surveyors, LLC recorded with Nantucket County Registry of Deeds as Plan No. 2016-19, containing 4,736 square feet, more or less. The Premises hereby conveyed are vacant portions of Holly Street (the “Parcels”).

The Grantor’s conveyance of these Parcels is based in part on the Grantee’s warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at 29 Nonantum Avenue which is a portion of Parcel 51 shown on Town Assessor’s Map 87 previously acquired by Grantee pursuant to a Deed filed with said Registry District of the Land Court as Document No. 150996 noted on Certificate of Title No. 25981 (collectively with the Parcel, the “Combined Premises”), and that no part of such Parcels or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded with said Deeds or filed with said Registry District of the Land Court. Accordingly, the Parcels hereby granted to the Grantee are conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcels and Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcels to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcels have not been merged with the Grantee’s existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed,

divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds and filed with said Registry District of the Land Court.

By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor's reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body," pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

The undersigned certifies that there has been full compliance with the provisions of G. L. c. 44 §63A.

No deed stamp taxes are due on this conveyance pursuant to G.L. c. 64D, §1.

For Grantor's title, see Order of Taking dated May 27, 2009 recorded with said Deeds in Book 1186, Page 90 and filed with said Registry District of the Land Court as Document No. 127324, and Certificate of Title No. 25961.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]

EXECUTED under seal this \_\_\_\_\_ day of March, 2016.

TOWN OF NANTUCKET  
BY ITS BOARD OF SELECTMEN

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of March, 2016, before me, the undersigned Notary Public, personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as Members of the Board of Selectmen of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Board of Selectmen of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

SETTLEMENT STATEMENT

Town of Nantucket ("Seller")  
29 Nonantum LLC ("Buyer")  
Lot 3 and Remainder Parcel 9, Holly Street, Nantucket, MA (Property)  
March 24, 2016 (Closing Date)

**Purchase Price:** \$ 1.00

**Less:**

Deposit \$ 1.00

**Plus:**

Payment in Lieu of Tax Adjustment  
3/24/16 -6/30/16 and \$ 42.75  
7/1/16-6/30/17

Reimbursement of Town's Legal Fees \$ 875.00

**Net Amount Due Seller:** \$ 917.75

**Checks:**

Town of Nantucket \$ 917.75

**BUYER: 29 NONANTUM LLC**

**SELLER: TOWN OF NANTUCKET  
BOARD OF SELECTMEN**

By: \_\_\_\_\_  
William F. Brandt, Jr., Manager

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **PURCHASE AND SALE AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

### **1. PARTIES AND MAILING ADDRESSES**

The Town of Nantucket, a municipal corporation, acting by and through its Board of Selectmen having an address of 16 Broad Street, Nantucket, Massachusetts 02554, hereinafter called the SELLER, agrees to SELL and Margaret Ann Ruley of 14 Croton Place, Irvington, New York 10533, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

### **2. DESCRIPTION**

The premises is a certain parcel of land in Nantucket, Massachusetts shown as Taking Parcel A, on Unnamed Way off Franklin Street, containing 1,377 square feet, more or less, shown on a plan entitled "Acquisition Plan for Portion of Paper Street between Franklin and West Chester Street, Nantucket, MA," dated September 4, 2015, prepared by Earle & Sullivan, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2015-86 (the "Property" or "Premises"). The Premises is considered a non-conforming lot pursuant to the Town of Nantucket Code.

### **3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES**

Intentionally Omitted (Vacant Land).

### **4. TITLE DEED**

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Any liens for municipal betterments assessed after the date of this agreement;
- (b) Laws, by-laws, rules, and regulations, whether federal, state, or local, which affect the use of the Premises, including, but not limited to, rules and regulations of the Nantucket Conservation Commission, Nantucket Zoning By-Law, Nantucket Historic District Commission, Nantucket Building Department, Nantucket Planning Board and Nantucket Board of Health;
- (c) Real estate taxes for the then-current fiscal year and future periods which are not due and payable at the time of delivery of the deed;

(d) Any fee which may be imposed upon the transaction which is the subject of this agreement by the Nantucket Land Bank Commission, which the Buyer agrees to pay at the time of delivery of the deed;

(e) Any right, restrictions or easements and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for residential purposes;

(f) Any public rights existing below mean high water, if applicable; and

(g) Said deed shall contain a reversion clause and a restriction set forth in Section 35 below to require the Premises to be used, and effectively merged with, the BUYER'S existing property known as 5 Franklin Street, Nantucket, Massachusetts, which is shown as Town Assessor's Map 41 as Parcel 391, for residential purposes and permanently restricting any further division or subdivision of the Premises as combined with said existing property.

## **5. PLANS**

If said deed refers to a plan necessary to be recorded therewith the BUYER shall deliver such plan with the deed in a form adequate for recording.

## **6. REGISTERED TITLE**

In addition to the foregoing, if the title to the said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title to said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

## **7. PURCHASE PRICE**

The agreed purchase price for said premises is Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), of which

\$ 0.00	was paid with the Proposal
\$ 2,500.00	is to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s).
<hr/>	
\$ 2,500.00	Total

## **8. TIME FOR PERFORMANCE; DELIVERY OF DEED**

Said deed is to be delivered to BUYER at the Nantucket County Registry of Deeds at 1:00 P.M. on the 24th day of March, 2016, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.



**9. POSSESSION AND CONDITION OF PREMISES**

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they are now, and (b) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

**10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. In the event that such an extension occurs, BUYER agrees to close prior to expiration of the extension period and as soon as reasonably possible after SELLER is prepared to deliver the Premises in compliance with this Agreement. In no event shall SELLER be required to expend more than a total of \$1,000.00 to clear title to and deliver possession of the Premises.

**11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

**12. BUYER'S ELECTION TO ACCEPT TITLE**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.

**13. ACCEPTANCE OF DEED**

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after delivery of said deed.

**14. USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

**15. INSURANCE**

Intentionally Omitted (Vacant Land).

**16. ADJUSTMENTS**

A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, § 63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed.

**17. ADJUSTMENT OF UNASSESSED AND UNABATED TAXES**

Intentionally Omitted.

**18. BROKER'S FEE**

Intentionally Omitted.

**19. BROKER'S WARRANTY**

Intentionally Omitted.

**20. DEPOSIT**

All deposits made hereunder shall be held in escrow by Town Treasurer, as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or by court order by a Court having competent jurisdiction.

All deposits made hereunder shall be placed in a non-interest-bearing account. The escrow agent hereunder shall not be liable for any loss suffered with respect to the escrow account or for any action or inaction taken by the escrow agent in good faith with respect to the account or deposit. The escrow agent may resign at any time by transferring the deposit to a successor escrow agent reasonably acceptable to SELLER and BUYER which successor agrees in writing to act as escrow agent. BUYER and SELLER jointly and severally agree to indemnify and hold the escrow agent harmless for any and all costs and expenses, including reasonable attorney's fees, incurred in connection with any such dispute.

**21. BUYER'S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages which shall be the SELLER'S sole and exclusive remedy at law and in equity for a breach of this agreement.

**22. RELEASE BY HUSBAND OR WIFE**

Intentionally Omitted.

**23. BROKER AS PARTY**

Intentionally Omitted.

**24. LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES**

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

**25. WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: NONE. SELLER and SELLER's agents have made no warranties or representations, express or implied, and BUYER is purchasing the premises in it's "AS IS" and without inspection.

**26. MORTGAGE CONTINGENCY CLAUSE**

None.

**27. CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

## **28. TITLE STANDARDS AND CONVEYANCING PRACTICES**

Any matter relating to performance of this Agreement which is the subject of a title, practice or ethical standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.

## **29. NOTICES**

All notices, demands, consents and approvals required or permitted hereunder shall be deemed to have been duly given if in writing addressed to BUYER or SELLER at:

In the case of BUYER:

Ms. Margaret Ann Ruley  
14 Croton Place  
Irvington, NY 10533

With a copy to:

Julie A. Fitzgerald, Esq.  
3 Nobska Way  
P.O. Box 2567  
Nantucket, MA 02584  
(508) 228-7525  
Facsimile: (508) 228-7526

In the case of SELLER:

Town of Nantucket  
Town and County Building  
16 Broad Street  
Nantucket, MA 02554

With a copy to:

Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street, 12<sup>th</sup> Fl.  
Boston, MA 02110  
(617) 556-0007  
Facsimile: (617) 654-1735

and shall be deemed delivered upon the earliest to occur of (a) receipt or refusal to accept delivery; or (b) upon delivery prior to 5:00 P.M. on any business day by telecopy evidenced by written or printed receipt confirmation, provided a copy of any such notice sent by telecopy is sent also by means of one of the above-described manners of delivery. BUYER and SELLER may change the address to which any notice is to be sent by giving reasonable notice to the other party of such new address in the manner specified.

## **30. NO BROKER WARRANTY**

The parties warrant and represent each to the other that there is no broker involved with the transaction to which this agreement pertains. In the event of a breach of the foregoing representation, the breaching party shall indemnify and hold harmless the non-breaching party for all expenses, including attorney's fees, which arise from such breach. The provisions of this section shall survive delivery of the deed hereunder.

## **31. SELLER'S CONTINGENCY**

SELLER'S obligations hereunder shall be contingent upon SELLER complying prior to closing with the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of the premises and obtaining all necessary authority to sell the

premises, including but not limited to a declaration that the premises constitutes surplus property and an appropriate Town Meeting vote.

**32. VENUE**

The parties hereto agree that all actions on this Agreement shall be brought in the Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Nantucket Division, to the extent that said Court shall have jurisdiction of the subject matter in any such action.

**33. EXTENSION AUTHORITY**

By executing this Agreement, Buyer and Seller hereby grant to their respective attorneys the actual authority to bind them by facsimile for the limited purpose of allowing them to grant extensions, and Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge that either party has disclaimed the authority granted herein to bind them.

**34. CLOSING DOCUMENTS**

BUYER agrees to sign at closing all forms reasonably required by SELLER including without limitation a disclosure statement pursuant to G.L. c. 7C, sec. 38. BUYER agrees to pay the legal costs incurred for preparing a Quitclaim Deed for the Premises.

**35. MERGER OF PREMISES**

BUYER shall consolidate the Premises with the BUYER'S existing abutting lot as set forth in the terms of the Request for Proposals for the "Nantucket Yard Sale Program." This consolidation process includes but is not limited to: relief obtaining a determination from the Zoning Administrator to alter any premises which is a nonconforming lot pursuant to Town Code 139-33A(8), if applicable and, filing a new perimeter plan, a so-called ANR Plan pursuant to G.L. c. 41, § 81P, with the Nantucket Planning Board, if applicable.

BUYER warrants that the Premises shall not be used as a separate buildable lot or resold as a separate buildable lot and shall be used for residential uses only. Notwithstanding any provision herein to the contrary, BUYER shall accept the deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce such restrictions and covenants as follows:

"The Grantor's conveyance of the parcel(s) described herein is based in part on the Grantee's warranty and representation to the Grantor that such parcel(s) shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 5 Franklin Street and shown on Town Assessor's Map 41 as Parcel 391 previously acquired by Grantee pursuant to Deed recorded with Nantucket County Registry of Deeds in Book 554, Page 172 (collectively, the "Combined Premises"), and that no part of the Combined Premises shall be hereafter

divided, subdivided or conveyed, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded with said Deeds. Accordingly, the parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises, and prohibiting the use or conveyance of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four months of the Date of the Deed, the Parcel has not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. The recording of a plan approved pursuant to G.L. c. 41, § 81P, shall effectuate a merger and constitute a release of the reversion rights of the Grantor. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used or conveyed in a manner inconsistent with these restrictions unless a prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds."

These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body" pursuant to G.L. c. 184, Section 26 such that the restrictions contained herein shall be enforceable for the full term of 200 years and not be limited in duration by any contrary rule or operation of law.

Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the grantee hereby appoints the grantor as its agent and attorney in fact to execute and record such notice and further agrees that the grantee shall execute and record such notice upon request. The representations, warranties and provisions of this Section 35 shall survive the delivery of this deed and any conveyance of the Premises, and BUYER shall accept a deed required to be delivered pursuant to this Agreement if such deed contains permanent restrictions, held by SELLER and running with the land, to enforce these covenants.

### **36. CONDITION OF PREMISES**

BUYER acknowledges that prior to the date of this Agreement, BUYER entered the Premises for the purpose of surveying and inspecting the Premises, as necessary for BUYER's financing and purchasing of the Premises and BUYER agrees that BUYER and BUYER's agents fully and completely inspected the Premises, and that BUYER is wholly satisfied with the condition of the Premises. SELLER and SELLER's agents have made no warranties or representations with respect to the Premises, express or implied, on which BUYER has relied except as otherwise set forth in this Agreement. In the event that BUYER and/or BUYER's agents, contractors and employees access the Premises to make any further inspections, assessments, surveys, appraisals or other non-invasive examination of the surface of the Premises, then such access shall be solely at the BUYER's risk, and BUYER shall indemnify and save SELLER harmless from any and all claims, demands, suits or causes of action of any nature whatsoever arising from BUYER's and its agents', contractors' and employees' presence at and/or actions upon or about the Premises, including, without limitation, any claim for personal injury or

property damage made by any such person afforded access to the Premises pursuant hereto. BUYER will, and will cause its agents, employees, and contractors, to observe any posted rules and regulations on the Premises.

**37. REPRESENTATION BY COUNSEL**

BUYER and SELLER each acknowledge and agree that they have by counsel of their own choosing or have had an opportunity to be so represented by counsel, and both BUYER and SELLER have read and understand the terms of this Agreement.

**38. ASSIGNMENT AND RECORDING OF AGREEMENT**

BUYER shall not file this Agreement with any Registry of Deeds or recording office. BUYER shall not assign this Agreement to any party without SELLER's prior written consent, which consent SELLER may withhold for any or no reason. In the event BUYER so files or assigns this Agreement without SELLER's prior written consent, then SELLER may elect, upon written notice to BUYER, to terminate this Agreement and to retain any and all deposits.

**39. SEVERABILITY**

If this Agreement shall contain any term or provision which shall be invalid, then the remainder of the Agreement, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law, provided such term or provision does not materially affect the obligations of either of the parties nor the essence of the Agreement.



**SELLER:**  
TOWN OF NANTUCKET  
By its Board of Selectmen:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
550171v3NANT 19712/0001

**ESCROW AGENT:**  
TOWN TREASURER

\_\_\_\_\_

**BUYER:**

By:

\_\_\_\_\_  
Margaret Ann Ruley

## QUITCLAIM DEED

### **Taking Parcel A, Unnamed Way off Franklin Street, Nantucket, Massachusetts**

The **TOWN OF NANTUCKET**, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Board of Selectmen (the "Grantor"), in consideration of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), receipt of which is hereby acknowledged, pursuant to the authority of Article 103 voted upon at 2015 Annual Town Meeting, a certified copy of which is attached hereto, grants to **Margaret Ann Ruley**, of 14 Croton Place, Irvington, New York 10533 (the "Grantee"), with QUITCLAIM COVENANTS, that certain plot of land shown as Taking Parcel A, on Unnamed Way off Franklin Street, in Nantucket, Massachusetts on a plan of land entitled "Acquisition Plan for Portion of Paper Street between Franklin and West Chester Street, Nantucket, MA," dated September 4, 2015, prepared by Earle & Sullivan, Inc., recorded with Nantucket County Registry of Deeds as Plan No. 2015-86. The premises hereby conveyed are a portion of Unnamed Way off Franklin Street in Nantucket, Massachusetts, and contains approximately 1,377 square feet, more or less of vacant land (the "Parcel").

The Grantor's conveyance of this Parcel is based in part on the Grantee's warranty and representation to the Grantor that such Parcel shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting property at 5 Franklin Street and shown on Town Assessor's Map 41 as Parcel 391, previously acquired by Grantee by Deed recorded with said Deeds in Book 554, Page 172 (collectively with the Parcel, the "Combined Premises"), and that no part of such Parcel or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded with said Deeds. Accordingly, the Parcel hereby granted to the Grantee is conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcel and Combined Premises to residential use as defined in Chapter 139 of the Town of Nantucket Code, prohibiting the division or subdivision of any portion of the Combined Premises, and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcel to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcel has not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. The recording of a plan approved pursuant to G.L. c. 41, §81P shall effectuate a merger and constitute a release of the reversion rights of the Grantor. These restrictions shall run with the title to the Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior

written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds.

By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor's reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body," pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

The undersigned certifies that there has been full compliance with the provisions of G. L. c. 44 §63A.

No deed stamp taxes are due on this conveyance pursuant to G.L. c. 64D, §1.

For Grantor's title, see Order of Taking dated January 27, 2016 recorded with said Deeds in Book 1522, Page 61.

**Remainder of Page Intentionally Blank**

EXECUTED under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF NANTUCKET  
BY ITS BOARD OF SELECTMEN

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned Notary Public, personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as Members of the Board of Selectmen of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Board of Selectmen of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

SETTLEMENT STATEMENT

Town of Nantucket ("Seller")  
Margaret Ann Ruley ("Buyer")  
Taking Parcel A, Unnamed Way off Franklin Street, Nantucket, MA (Property)  
March 24, 2016 (Closing Date)

**Purchase Price:** \$ 2,500.00

**Less:**

Deposit \$ 0.00

**Plus:**

Payment in Lieu of Tax Adjustment  
3/24/-6/30/16 and \$ 12.37  
7/1/16-6/30/17

Reimbursement of Town's Legal Fees \$ 700.00

**Net Amount Due Seller:** \$ 3,212.37

**Checks:**

Town of Nantucket \$ 3,212.37

**BUYER:**

**SELLER: TOWN OF NANTUCKET  
BOARD OF SELECTMEN**

By: \_\_\_\_\_  
Margaret Ann Ruley

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

QUITCLAIM DEED

**Parcel 1, West Chester Street, Nantucket, Massachusetts**

The **TOWN OF NANTUCKET**, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, having an address of Nantucket Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554 (“Grantor”) for consideration of One Dollar (\$1.00) hereby grants with QUITCLAIM COVENANTS, pursuant to the authority of Article 103 voted upon at the 2015 Annual Town Meeting, a certified copy of which is attached hereto, to the **NANTUCKET ISLANDS LAND BANK**, established pursuant to Chapter 669 of the Acts of 1983, as amended, acting by and through the Nantucket Islands Land Bank Commission, having an address of 22 Broad Street, Nantucket, Massachusetts 02554 (“Grantee”) the following parcel of land to be used for any and all purposes authorized by the Land Bank Act:

A certain parcel of land in Nantucket, Massachusetts shown as Parcel 1, West Chester Street on a plan of land entitled “Town Meeting Article, Paper Street Acquisition Plan, Town of Nantucket, Nantucket, Mass., Portion of West Chester Street,” dated June 25, 2015, prepared by Ackme Survey LLC and recorded with Nantucket county Registry of Deeds as Plan No. 2015-52 (the “Plan”), containing 8,905.5 square feet, more or less.

For Grantor’s title see Order of Taking dated January 27, 2016 recorded with said Deeds in Book 1522 Page 52.

No deed stamps are due on this conveyance pursuant to G.L. c.64D, § 1.

Executed under seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF NANTUCKET  
BY ITS BOARD OF SELECTMEN

\_\_\_\_\_  
Robert DeCosta

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Rick Atherton

\_\_\_\_\_  
Tobias B. Glidden

\_\_\_\_\_  
Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned Notary Public, personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate, as Members of the Town of Nantucket Board of Selectmen and proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free act and deed of the Board of Selectmen of the Town of Nantucket

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**From:** [Dan Pronk](#)  
**To:** [Erika Mooney](#)  
**Subject:** Commercial Conch Regs  
**Date:** Wednesday, March 16, 2016 10:15:37 AM

---

Good morning, I'd like to request a public hearing with the board of selectman, regarding the current shellfishing policy + regulations. Specifically section 4.25-4.28. Thank you for your time.

Sent from my iPhone

**From:** [Dan Pronk](#)  
**To:** [Erika Mooney](#)  
**Subject:** Commercial Conch Regs  
**Date:** Wednesday, March 16, 2016 10:15:29 AM

---

I'd like to add sections from 4.25-4.31 as well

Sent from my iPhone

# TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR  
2 BATHING BEACH ROAD  
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV  
508-228-7230



## MEMO

3/18/2016

To: Libby Gibson, Town Manager  
Gregg Tivnan, Assistant Town Manager  
JC Johnsen, Shellfish Warden  
Tara Riley, Shellfish Biologist

From: Jeff Carlson, Natural Resources Coordinator

Re: Commercial Shellfish Regulation 4.30

This memo is to provide some clarification on Commercial Shellfish Regulation 4.30 as adopted March 4, 2015 by the Board of Selectmen. This regulation reads as follows:

***4.30 Prohibition of Harvest:*** *Commercial harvest of whelks/conch prohibited every other year. A schedule of closures will be approved by the Town of Nantucket or its designee.*

This fishery was actively fished during 2015 by lawful license holders for the harvest of conch/whelk. Therefore by the above regulation 2016 will be a closed season to the harvest of conch/whelk within Nantucket and Madaket Harbors. This schedule will continue to have open years on the odd years (2017, 2019, 2021) and closed on the even years (2016, 2018, 2020) as required by this regulation.

This regulation was developed over a two year time period as part of the Harbor Shellfish Advisory Board Bylaw review subcommittee. The then current state license holders for the harvest of conch were invited during the development of these regulations and recommended this specific regulation to help ensure the sustainability of this specific fishery over time. It was an unwritten conservation effort that dates back to 1999 that was proposed and maintained by the then state commercial license holders. We are issuing this schedule to clarify and implement this regulation and to provide background to its development.



The Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

☐ For Reconsideration

FORM 43  
MUST BE SIGNED BY LOCAL LICENSING AUTHORITY

076200041	Nantucket	10/23/2016
ABCC License Number	City/Town	Local Approval Date

**TRANSACTION TYPE (Please check all relevant transactions):**

<input type="checkbox"/> New License	<input type="checkbox"/> New Officer/Director	<input type="checkbox"/> Pledge of License	<input type="checkbox"/> Change Corporate Name
<input type="checkbox"/> Transfer of License	<input type="checkbox"/> Change of Location	<input type="checkbox"/> Pledge of Stock	<input type="checkbox"/> Seasonal to Annual
<input checked="" type="checkbox"/> Change of Manager	<input type="checkbox"/> Alteration of Licensed Premises	<input type="checkbox"/> Transfer of Stock	<input type="checkbox"/> Change of License Type
<input type="checkbox"/> Cordials/Liqueurs Permit	<input type="checkbox"/> Issuance of Stock	<input type="checkbox"/> New Stockholder	<input type="checkbox"/> Other <input type="text"/>
<input type="checkbox"/> 6-Day to 7-Day License	<input type="checkbox"/> Management/Operating Agreement	<input type="checkbox"/> Wine & Malt to All Alcohol	

Name of Licensee  EIN of Licensee

D/B/A  Manager

ADDRESS:  CITY/TOWN:  STATE  ZIP CODE

<input type="text" value="Seasonal"/>	<input type="text" value="All Alcohol"/>	<input type="text" value="Club"/>	Granted under Special Legislation? Yes <input type="checkbox"/> No <input type="checkbox"/>
Annual or Seasonal	Category: (All Alcohol; Wine & Malt; Wine, Malt & Cordials; Wine; Malt)	Type: (Restaurant, Club, Package Store, General On Premises, Etc.)	If Yes, <input type="text" value="Chapter"/> <input type="text" value="Year"/>

**Complete Description of Licensed Premises:**

Application Filed:  Advertiser:  Abutters Notified: Yes ☐ No ☒

Licensee Contact Person for Transaction  Phone:

ADDRESS:  CITY/TOWN:  STATE  ZIP CODE

Remarks:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission  
Ralph Sacramone  
Executive Director

ABCC Remarks:

VAUGHAN, DALE, HUNTER AND BEAUDETTE

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

WHALER'S LANE

P.O. BOX 659

NANTUCKET, MASSACHUSETTS 02554

TEL: (508) 228-4455

FAX: (508) 228-3070

EDWARD FOLBY VAUGHAN

KEVIN F. DALE

RICHARD P. BEAUDETTE

LORI D'ELIA

BRYAN J. SWAIN

WILLIAM F. HUNTER

OF COUNSEL

RECEIVED  
MAR 15 2016

March 10, 2016

**HAND DELIVERY**

Anne McAndrew, Licensing Agent

2 Fairgrounds Road

Nantucket, Massachusetts 02554

**RE:     *Change of Manager Application  
Sankaty Head Beach Club, Inc.***

Dear Anne:

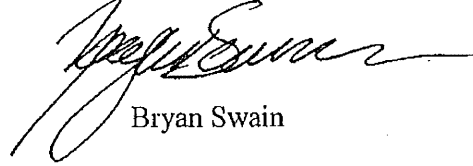
As you are aware, our firm represents The Sankaty Head Golf Club, Inc.  
d/b/a **Sankaty Head Beach Club**. On behalf of our client, enclosed please find an  
*Application for a Change of Manager* with supporting documentation. Our client  
would like to change the Manager on its Seasonal All Alcoholic Liquor License  
from Robert Kuratek to Lori Snell.

Further to this Application, enclosed please find the following:

1. Retail Transmittal Form
2. \$200.00 check made payable to the "Commonwealth of Massachusetts"
3. \$20.00 check made payable to the "Town of Nantucket"
4. Petition for a Change of Manager
5. Manger's Form
6. Personal Information
7. CORI Application
8. Corporate vote of Sankaty Head Beach Club, Inc.
9. TIPS Certification

Please schedule this matter for the Board of Selectmen's meeting. Thank you for your help and please call me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Swain", written in a cursive style.

Bryan Swain

Encs.

cc: Sankaty Head Beach Club, Inc.



*The Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
239 Causeway Street  
Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

PETITION FOR CHANGE OF LICENSE

076200041

ABCC License Number

Siasconset

City/Town

The licensee Sankaty Head Beach Club, Inc. respectfully petitions the Licensing Authorities to approve the following transactions:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Change of Manager                                    | <input type="checkbox"/> Alteration of Premises |
| <input type="checkbox"/> Pledge of License/Stock   | <input type="checkbox"/> Cordial & Liqueurs     |
| <input type="checkbox"/> Change of Corporate Name/DBA                                    | <input type="checkbox"/> Change of Location     |
| <input type="checkbox"/> Change of License Type (\$12 ONLY, e.g. "club" to "restaurant") |   |

☒ Change of Manager

Last-Approved Manager:

Robert Kuratek

Requested New Manager:

Lori Snell

☐ Pledge of License /Stock

Loan Principal Amount: \$

Interest Rate:

Payment Term:

Lender:

☐ Change of Corporate Name/DBA

Last-Approved Corporate Name/DBA:

Requested New Corporate Name/DBA:

☐ Change of License Type

Last-Approved License Type:

Requested New License Type:

☐ Alteration of Premises: (must fill out attached financial information form)

Description of Alteration:

☐ Change of Location: (must fill out attached financial information form)

Last-Approved Location:

Requested New Location:

Signature of Licensee

Kevin F. Dale  
(If a Corporation/LLC, by its authorized representative)  
By: Kevin F. Dale, Secretary

Date Signed

3/10/16



*The Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
239 Causeway Street  
Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

**MANAGER APPLICATION**

All proposed managers are required to complete a Personal Information Form,  
and attach a copy of the corporate vote authorizing this action and appointing a manager.

**1. LICENSEE INFORMATION:**

Legal Name of Licensee:	<input type="text" value="The Sankaty Head Golf Club, Inc."/>	Business Name (dba):	<input type="text" value="Sankaty Head Beach Club, Inc."/>
Address:	<input type="text" value="18 Hoicks Hollow Road"/>		
City/Town:	<input type="text" value="Nantucket"/>	State:	<input type="text" value="MA"/>
		Zip Code:	<input type="text" value="02564"/>
ABCC License Number: (If existing licensee)	<input type="text" value="076200041"/>	Phone Number of Premise:	<input type="text" value="508-257-6655"/>

**2. MANAGER INFORMATION:**

A. Name:	<input type="text" value="Lori Snell"/>	B. Cell Phone Number:	<input type="text" value="508-367-3595"/>
C. List the number of hours per week you will spend on the licensed premises:	<input type="text" value="40+"/>		

**3. CITIZENSHIP INFORMATION:**

A. Are you a U.S. Citizen:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	B. Date of Naturalization:	<input type="text"/>	C. Court of Naturalization:	<input type="text"/>
----------------------------	---	----------------------------	----------------------	-----------------------------	----------------------

(Submit proof of citizenship and/or naturalization such as U.S. Passport, Voter's Certificate, Birth Certificate or Naturalization Papers)

**4. BACKGROUND INFORMATION:**

A. Do you now, or have you ever, held any direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages? Yes ☐ No ☒

If yes, please describe:

B. Have you ever been the Manager of Record of a license to sell alcoholic beverages that has been suspended, revoked or cancelled? Yes ☐ No ☒

If yes, please describe:

C. Have you ever been the Manager of Record of a license that was issued by this Commission? Yes ☐ No ☒

If yes, please describe:

D. Please list your employment for the past ten years (Dates, Position, Employer, Address and Telephone):

2012 - Present: Administrative Assistant, The Sankaty Head Golf Club, PO BOX 293, Siasconset, MA 02564, 508-257-6391  
2011 - 2012: Receptionist, Nantucket Golf Club, 250 Milestone Road, Nantucket, MA 02554, 508-257-8500  
2006-2011: Unemployed.

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Signature

*Lori Snell*

Lori Snell

Date



**SANKATY HEAD BEACH CLUB, INC.**

**CORPORATE CERTIFICATE**

The undersigned being the Secretary of the Sankaty Head Beach Club, Inc., organized under the laws of the Commonwealth of Massachusetts (The "Company") hereby certifies as follows:


1. That the undersigned is the Secretary of the Company;
2. That as of this date, the Company is in full force and effects and is authorized to transact business in the Commonwealth of Massachusetts;
3. That the undersigned has been directly and duly authorized by the Company to file this Petition to change the manager of its liquor license to Lori Snell with the Alcohol Beverages Control Commission for the Commonwealth of Massachusetts (The "ABCC"),
4. That the undersigned has been directed and duly authorized by the Company to execute any and all documents and perform any and all acts to effectuate the foregoing, all upon such terms and provisions as the undersigned deems appropriate.

**SIGNATURE PAGE TO FOLLOW**

Executed under seal this 10<sup>th</sup> day of March, 2016

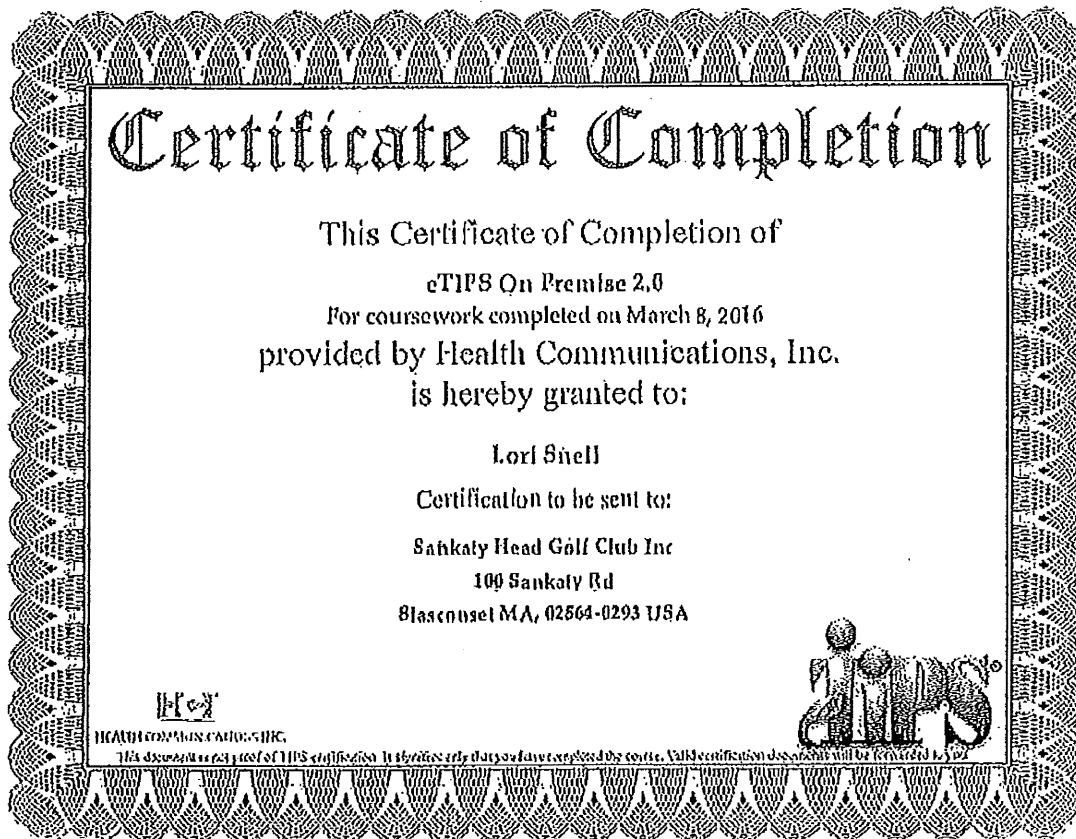
Sankaty Head Beach Club, Inc.

By: Kevin F. Dale

  
\_\_\_\_\_  
Kevin F. Dale, Secretary

Print Menu

Do not click Back-Space to leave this window



**LICENSE  
ALCOHOLIC BEVERAGES  
76200041**

THE LICENSING BOARD OF  
THE TOWN OF NANTUCKET, MASSACHUSETTS,  
HEREBY GRANTS A SEASONAL 2015

**CLUB**

**License to Expose, Keep for Sale, and to Sell**

**ALL ALCOHOLIC BEVERAGES**

*To Be Drunk on the Premises*

**Sankaty Head Beach Club, Inc. dba  
Sankaty Head Beach Club**

Robert Kuratek, Manager

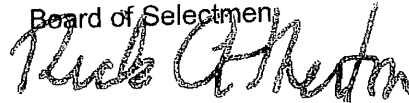
**Described Premises: Bar, Kitchen, Dining Facilities**

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended and any rules or regulations made thereunder by the licensing authorities. This license is effective **April 1, 2015 through January 15, 2016**, unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned has hereunto affixed his official signature this 18th day of March 2015.

*The hours during which alcoholic beverages may be sold:* In accordance with MGL Chapter 138 and amendments thereto with the provision that patrons shall not be served after 1:00AM and that the patrons must be off the license premises and said premises must be closed by 1:30AM. In accordance with Article 40 ATM 2001 Chapter 86.1 Board of Health Regulations, Prohibition of Smoking in Certain Places within the Town of Nantucket applies.

Board of Selectmen



Rick Atherton, Chairman

**This License Shall Be Displayed  
on the Premises in a Conspicuous  
Place Where it May Be Easily Read.**

**License Fee: \$2900.00**

**From:** [Peter B. Brace](#)  
**To:** [Libby Gibson](#)  
**Cc:** [Erika Mooney](#); [Jeff Carlson](#); [Sheila Lucey](#); [William Pittman](#)  
**Subject:** Over-60 scallop license amendment  
**Date:** Thursday, January 14, 2016 12:27:21 PM  
**Attachments:** [Over-60 scallop license.docx](#)  
[Over-60 license language - HSAB, Dec. 1, 2015.docx](#)

---

Libby,

The Harbor & Shellfish Advisory Board instructed me on Dec. 1, to request a public hearing for the purpose of amending the town's shellfish regulations to add a compromise on the over-60 scallop license. We're acting request from Nantucket resident and former commercial scalloper Lionel Starr who represents many other island citizens seeking the restoration of this regulations, which the Board of Selectmen removed from the regulations, at the HSAB's request on March. 2015.

Let me know if you have any questions.

Peter B. Brace,  
Chairman

Jan. 14, 2016

Rick Atherton  
Bobby DeCosta  
Matt Fee  
Tobias Glidden  
Dawn Hill-Holdgate

Mr. DeCosta,

The Harbor & Shellfish Advisory Board requests that the Board of Selectmen hold a public hearing at its earliest convenience for the purpose of restoring the over-60-years-old scallop license, which the selectmen deleted from the town's shellfish regulations on March 4, 2015 acting on the HSAB's recommendation among others. The HSAB voted unanimously at its Dec. 1, 2015 meeting to recommend that the Board of Selectmen amend Section 2, Subsection 2.14 – Methods of Taking by adding Subsection 2.14b as detailed in the attachment to this emailed letter.

Originally, the HSAB recommended that the selectmen remove this part of the shellfish regulations because during the time our board was working to revise the shellfish regulations, the fishermen on the HSAB and staff in the Natural Resources Department felt that this special license was being abused. Previously issued by the town at no charge to anyone over 60 years old, the license allowed the taking of two bushels a day during Nantucket's commercial scallop season. Although scallops harvested with this license weren't to be sold commercially and were intended for personal use, the HSAB learned that some commercially licensed scallopers were fishing with some of those individuals possessing the over-60 license and selling all scallops caught. Given the uncertainty of scallop populations from year to

year and the trend of declining eelgrass beds, the HSAB decided it prudent to do away with this free license.

However, since the adoption of the revised shellfish regulations last March, four Nantucket citizens representing scores of other year-round residents, requested that the HSAB reconsider its' and the selectmen's action on the over-60 license. Working with this group's spokesman, Lionel Starr, and former Nantucket Harbormaster Dave Fronzuto, the HSAB arrived at a compromise that all agreed to. If the Board of Selectmen vote in the positive, the over-60 scallop license would be issued free only to year-round Nantucket residents who formerly commercially scalloped in Nantucket waters for the taking of two bushels per week for personal use.

Please let me know if you need any more information on this request.

Thank you for your time and patience.

Sincerely,

Peter B. Brace,  
Chairman, Harbor & Shellfish Advisory Board

Suggested language change/addition to Town of Nantucket's  
Shellfish Regulations:

**Existing language:**

2.14 - Methods of taking

The taking of any shellfish from the waters of the Town of Nantucket shall be limited to hands, dip nets, rakes and tongs, unless otherwise noted within these regulations.

**Suggested additional language:**

Add the following language below Subsection 2.14:

2.14b - Methods of Taking

Any Nantucket Resident over the age of sixty (60) who has previously held a commercial permit to harvest bay scallops within the waters of Nantucket may, between November 1 and March 31, take two (2) bushels of bay scallops per week by methods used previously by such person, including the use of a dredge, if applicable. These scallops are for the personal consumption of the permit holder and will not be sold, bartered or presented for commercial purposes. Recreational violations outlined in Section 7.6 are applicable.

Add a new category to the chart in Subsection 3.11b as follows:

“Retired scalloper                      Free”

Add new row within the bay scallop section of the chart in Subsection 3.3:



In the Limit column add: “2 bushels per week” and in the Size and Special Considerations column add: “Under section 2.14b”

Town of Nantucket  
Shellfishing Policy and Regulations  
As Adopted on March 4, 2015 by Nantucket Board of Selectmen  
Under Authority of Massachusetts General Law, Chapter 130  
Under Authority of Chapter 122 of the Code of the Town of Nantucket

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## **Section 1 – Shellfishing Policy for the Town of Nantucket/Purpose of Regulations**

The purpose of these regulations is to preserve, protect and restore Nantucket's shellfisheries, underwater and intertidal habitats within the Town of Nantucket's jurisdiction. These regulations supplement and are consistent with the requirements of the Commonwealth of Massachusetts including Massachusetts General Law Chapter 130, Code of Massachusetts Regulations 322, the Code of the Town of Nantucket Chapter 122, the Town of Nantucket Shellfish Management Plan, the Nantucket and Madaket Harbors Action Plan, and the current Best Management Practices for the Shellfish Culture Industry in Southeastern Massachusetts, developed by Southeastern Massachusetts Aquaculture Center (SEMAC).

To implement this policy, the Board of Selectmen or their designee may restrict the taking of shellfish by commercial or noncommercial permit holders in any area or in any manner for the purpose of managing the fishery or habitats.

The waters of the Town of Nantucket that are used for commercial shellfishing and shellfish aquaculture are a unique resource, therefore the granting of commercial shellfishing permits and licenses for aquaculture are restricted to declared domiciled residents of Nantucket (See Section 4.1).

## **Section 2 – General Regulations (Applying to Recreational, Commercial and Aquaculture Licenses)**

### **2.1 – License or Permit Required**

All persons taking shellfish for recreational or commercial purposes shall be required to have a shellfish permit as issued by the Town of Nantucket.

#### **2.1a – Display of license**

All persons taking shellfish for recreational or commercial purposes shall be required to clearly display a shellfish permit/pin as issued by the Town of Nantucket.

### **2.2 – Areas where Recreational and Commercial Shellfishing May Occur**

Any area within the Town of Nantucket's waters; unless posted as closed by the Commonwealth of Massachusetts or Town of Nantucket.

### **2.3 – Daily Limit**

No permit holder shall take shellfish or other marine organisms in excess of the daily limit.  
(See individual species per permit type)

### **2.4 – Landing Shellfish**

No shellfish shall be brought ashore except in their shells.

### **2.5 – Daily Time Limit**

Permit holders shall be able to take shellfish from the waters of the Town by allowed methods from one half hour before sunrise to one half hour before sunset unless otherwise specified in these regulations.

### **2.6 – Closures and Red Flag**

Closures of the shellfishery shall apply to both recreational and commercial fisheries and shall be noted by red flags as posted by the Shellfish Warden. The Red Flag will be raised at the Town Pier (located at 34 Washington St.) and Jackson's Landing in Madaket. Other closure events for water quality or habitat preservation shall be posted by the Shellfish Warden at the specific site of the closure. All closures will be posted at the Town Pier, Natural Resources Office, and on the

Natural Resources Department webpage. Closures may be related (but not limited) to temperature or shellfish strandings.

#### 2.7 – Temperature Restrictions

No shellfishing shall be carried on when the air temperature is below 28 degrees Fahrenheit (2 degrees Celsius), as determined by the Shellfish Warden, areas licensed for aquaculture are exempt from this regulation. A red flag will be raised at the Town Pier (located at 34 Washington St.) and Jackson's Landing in Madaket. Vessels are required to return to shore and land shellfish if the temperature dips below 28°F.

#### 2.8- Habitat Sensitive Areas

No commercial or recreational shellfishing may occur in areas deemed "habitat sensitive" and have a posted closure by the Board of Selectmen or its designee.

#### 2.9 – Bay Scallop Strandings

No taking of bay scallops, either recreational or commercial shall be carried on during a red flag stranding event as determined by the Shellfish Constable.

#### 2.10 – Poaching

Any unauthorized person who poaches or otherwise disturbs any shellfish in any amount or in any location shall be subject to criminal penalties and potential civil penalties  
(See MGL Chapter 130; and Section 11. 6 Revocation of Shellfishing Permits.)

#### 2.11 – Disturbance of licensed or closed areas

No person other than the license holder or their designee shall inspect, disturb or handle any shellfish or gear within the marked leased or closed area.

#### 2.12 – Inspection on demand

All persons harvesting, carrying away, or otherwise having in their possession shellfish or marine organisms of any kind, in a boat, container, shanty, or vehicle shall exhibit all such shellfish for inspection by the Shellfish Wardens, Police Officers or any other duly authorized agents.

#### 2.13 – Possession of Seed

An individual or entity must file a state scientific permit, state propagation permit, or aquaculture license with the Natural Resources Department if planning on possessing seed shellfish for any reason. A violation of this regulation shall exist if the total catch contains more than 5% seed shellfish.

#### 2.14 – Methods of taking

The taking of any shellfish from the waters of the Town of Nantucket shall be limited to hands, dipnets, rakes and tongs, unless otherwise noted within these regulations.

#### 2.15 – SCUBA diving and snorkeling

All persons taking shellfish using SCUBA or snorkeling shall be required to display a dive flag for each individual in the water. Flag must be within 100 feet of diver. Recreational divers and snorkelers must have a pin on their person.

#### 2.16 – Transplanting

##### 2.16a – Transplanting Shellfish Outside of Nantucket Waters

No shellfish of any size shall be taken out of the Town for the purpose of transplanting or to be placed in any waters outside the limits of the Town without proper permits.

##### 2.16b- Shipping of Live Shellfish for Broodstock/Propagation Purposes

No live shellfish of any size shall be shipped outside of Nantucket for broodstock or propagation purposes until a pathology certificate is provided and permission is granted from the Board of Selectmen or its designee.

##### 2.16c – Transplanting Shellfish into Nantucket Waters

No shellfish shall be planted or transplanted into the waters of the Town of Nantucket, without the proper permits, certificates of origin, and approval by the proper authorities.

##### 2.16d – Harvesting Seed from the Wild Not Allowed

The taking of seed is prohibited without the proper permits and approval by the proper authorities.

2.16e- Wet Storage of Recreational Shellfish Prohibited. The holding or storing of a recreational shellfish catch within Nantucket waters in any amount for any amount of time is prohibited.

#### 2.17 By-Catch

No by-catch of any species in excess of 5% of the licensed targeted shellfishery shall be allowed for commercial purposes. Any by-catch that is less than 5% of the total catch must be in season according to the Division of Marine Fisheries and the Town of Nantucket. If allowable by-catch is to be sold commercially, you must have a commercial license for that species.

2.18 Catch Reports Provided to the Town

2.18a-Commercial Catch Reports: Holders of Commercial Shellfish Permits shall submit a monthly catch report to the Shellfish Warden, on forms provided. It shall be the responsibility of the permit holder to insure that he/she submits the required Catch Report no later than the fifteenth(15) day of the month following the month for which such report is being made:(i.e. December 15,January 15, February 15, March 15, and April 15).Failure to submit a catch report shall be a violation of the Town of Nantucket.

2.18b-Recreational Catch Reports: All recreational shellfish permit holders shall file an annual catch report with the Town, stating the amount, species, and place of shellfish harvested, for the twelve months ending on the preceding March 31. A new permit may not be issued until the catch report has been completed by the permit holder.



### Section 3– Recreational (Non-commercial) Shellfishing

#### 3.1 – Permits

The recreational harvest of shellfish requires all individuals age 14 or older to obtain a recreational shellfish permit through the Town of Nantucket. All children participating in shellfish harvesting under the age of 14 must be accompanied by a valid permit holder. Shellfish taken by a child under the age of 14 are included in the catch limit of the permit holder.

3.1a- Town of Nantucket Recreational Shellfish Licenses are not transferrable or subject to refunds

#### 3.1b – Annual Permits (April 1 – March 30)

Resident	\$35.00
Resident over 60	Free (Lifetime permit)
Non-Resident (all ages)	\$125.00
Non-Resident (all ages) – weekly	\$50.00
Replacement fee	\$5.00

\*All fees are to be set by the Board of Selectmen

\*\*Residency requirements apply for residency fees (See Section 4.1.a)

#### 3.2 – Cannot harvest for commerce

No person holding a recreational permit shall harvest shellfish, eels or sea worms for the purpose of sale, trade or other consideration.

#### 3.3 – Harvest criteria by species

Measurement requirements

### 3.3 – Recreational Harvest criteria by species

Species	Season	Days	Limit	Size and Special Considerations
Bay scallops	Open October 1 – March 31	Wed. – Sun.	1 bushel per week	Must possess a well defined growth ring. <b>Exception: Bay scallops that have a well-defined raised annual growth line located less than 10mm from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least 63.5mm or 2.5"</b>
Quahogs	Year round	Daily	1 – 10 quart bucket/day; no more than 1 bushel/week	1" thick at hinge
Soft-shell Clams	Closed June 15 <sup>th</sup> - Sept. 15	Sunday Only	1 – 10 quart bucket	2" in length <b>Note: undersized clams must be replanted neck upright covered with a layer of sand.</b>
Razor Clam	Closed June 15 <sup>th</sup> - Sept. 15	Sunday Only	1 – 10 quart bucket	2" in length <b>Note: undersized clams must be replanted neck upright covered with a layer of sand.</b>
Blue Mussel	Year round	Daily	1 bushel/week	2" in length <b>Note: can be taken by one standard bay scallop dredge outside of Eelgrass areas.</b>
Oysters	Year round	Daily	0.5 bushel/week	3" in length
Conch	Closed Dec.16- April 14	Daily	1 bushel/week	2.75" in width
Blue Crab	Closed January 1- April 30	Daily	25 crabs/day	5" from spine to spine <b>Note: Hand or dip net only – State permit required for other methods of taking</b>
Horseshoe crabs				Prohibited
Green Crab				In order to harvest green crabs you must obtain a Letter of Authorization (LOA) from DMF
Eels	Year round	24 hours/day	50/day	6" minimum <b>Note: can be taken by gigging or by dip net 1.5" mesh netting or bigger; Requires state recreational saltwater fishing license</b>
Other shellfish (limpets, periwinkles, blood arks, sea clams, sea quahogs, sea scallops, winkles)				May be taken in accordance to the laws of Massachusetts-see state regulations

## **Section 4-Commercial Shellfishing**

### **4.1 Eligibility for All Commercial Shellfishing Permits**

4.1.a: Must meet residency requirements: A declared resident of the Town of Nantucket: Written proof that Nantucket is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Board of Selectmen or their designee. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or verification information as deemed necessary by the issuing agency. To qualify as a resident under these regulations an individual must have maintained that residence for one full year. Any commercial permit will be revoked if the holder ceases to meet the residency requirement for the Town of Nantucket.

4.1.b: Applicant must be 14 years of age or older.

4.1.c: Minors under fourteen (14) without a permit: Person under fourteen (14) are permitted to harvest shellfish in a commercial area while under the supervision of a parent or a guardian holding a commercial permit. No shellfish may be taken in excess of the daily limit of the permit held by the parent or guardian.

4.1.d: Permits will only be issued after the applicant has shown proof of having a valid State Commercial Permit with a shellfish endorsement and a valid Shellfish Transaction Card from the DMF ([CMR 322 7.01 \(2\) g,i,k](#))

4.1. e.: Unnaturalized Foreign Born Persons: Commercial permits will not be issued to those who have resided on Nantucket for at least five (5) years prior to making an application ([MGL Chapter 130; Section 55](#)).

**4.2: Harvest must be tagged:** Each day at the time of harvest, any commercial permit holder who has shellfish of any kind for sale, trade or other consideration, must legibly mark all containers of shellfish using legal tags. ([MGL Chapter 130; Section 81/83](#)).

**4.3 Commercial Species Shellfish Permits (other than Bay Scallops):** Commercial Permits for Quahogs, Blue Mussels, and Conchs/Whelk shall be filed with the Town of Nantucket or its designee on an annual basis and shall be valid for one (1) year from date of approval.

**4.4 Commercial Permit Required for Dragging/Dredging:** The owner or operator of a vessel engaged in commercial shellfishing in the waters of the Town of Nantucket involving the use of a drag, dredge, or other mobile gear, shall hold a valid Town of Nantucket Commercial Shellfishing Permit.

## **BAY SCALLOP REGULATIONS (Commercial)**

### **4.5 Commercial Bay Scallop Permit Requirements**

4.5.a: Commercial Bay Scallop Applications and Commercial Scallop Apprentice Applications must be filed and paid in full with the Nantucket Police Department prior to 5:00 pm on March 31<sup>st</sup> for the commercial season beginning the following November 1<sup>st</sup> and lasting through March 31<sup>st</sup> of any given year.

4.5. b: Late Applicants: Applications for Commercial Scalloping or Commercial Scallop Apprentices filed after 5:00 pm on March 31<sup>st</sup> will not be valid for scalloping until December 1<sup>st</sup> or as of the 30<sup>th</sup> day after the date submitted, whichever is later. No waivers will be granted.

4.5. c: Commercial Bay Scallop Permits shall be issued for a period of one year from April 1.

### **4.6 Apprentice Commercial Bay Scallop Permit Requirements**

4.6.a: Must meet residency requirements.

4.6.b: All applicants for a commercial scallop permit that do not have a history of being issued such a permit from the Town of Nantucket will be issued an “apprentice permit.” Apprentices are required to scallop with a valid commercial scallop permit holder that agrees to participate in the apprentice program for forty (40) active fishing days. Apprentices and their mentors must attend a pre-season workshop with the Department of Natural Resources. After providing proof of apprenticeship completion to the Department of Natural Resources and the Harbor and Shellfish Advisory Board, the apprentice will be issued a valid commercial scallop permit. For all other purposes, the holder of an apprentice permit will be considered a fully permitted commercial scallop fisherman during the term of the apprenticeship and thereby bound by all applicable laws and regulations.

**4.7 No Transfer or Refunds for Town of Nantucket Commercial Shellfish Permits:** No transfers or refunds of Town of Nantucket commercial shellfish permits will be granted.

**4.8 Commercial Bay Scallop Season and Days:** The Board of Selectmen shall allow the taking of bay scallops for commercial purposes from November 1-March 31 on Monday-Friday only, with the exception of Christmas Day. When Christmas falls between Monday-Friday of any given year, scalloping shall be allowed the following Saturday. Any alteration to these dates shall be done in accordance to [Ch.122, Section 122-9, Code of the Town of Nantucket](#). The Board of Selectmen may grant permission for the collection of scallop seed outside the commercial season for the purpose of moving seed.

**4.9 Commercial Bay Scallop Daily Start Time and Landing Hours:** Dredges may be deployed between the hours of 6:30 am and 4:30 pm. All commercial bay scallop boats must be at off-loading points by 4:30 pm.

**4.10 Returning to Shore to Pick Up Cullers:** A license holder may return to shore to shore to pick up a culler but no more than 2.5 bushels of bay scallops may be on board when the culler boards the vessel.

**4.11 Returning to Shore for Other Reasons With the Intention of Resuming Scalping on the same Day:** License holder must notify the shellfish warden if he/she plans to resume so that the boat may be checked upon arrival.

**4.12 Transferring of Scallops:** No transferring of catch from one boat to another.

**4.13 Commercial Bay Scallop Limits:** The Board of selectmen shall allow the taking of 5 level bushels (shells included) in “town approved boxes” per commercial bay scallop permit. Each boat may have a maximum of 10 level bushels harvested with two (2) valid commercial bay scallop permit holders on board.

**4.14 Bay Scallop Size Harvest Criteria: (322 CMR.6.11):** No person shall land or possess bay scallops without a well defined growth line and that growth line shall measure at least 10 millimeters from the hinge of the shell. *Exception: Bay Scallops that have an annual growth line located less than 10 millimeters (mm) from the hinge of the shell, shall be lawful to harvest if the shell height is at least 63.5 millimeters (mm) or 2.5 inches.*

**4.15 Use of Dredges for Commercial Bay Scallops:** Dredges may not be used before 6:30 am or after 4:30pm on any given scalping day. The weight of any given dredge is restricted to 35 pounds (lbs). The use of two or more dredges connected by an iron bar or any similar device is prohibited. No dredge or dredges greater than twenty-eight inches (28”) will be permitted. Power-hoisting of dredges is permitted provided no dredge is more than 28” wide, seven (7) rings deep, and the net on the dredge is not over eighteen (18) mesh long. Only 8 dredges are allowed to be towed at any given time.

**4.16 Landing Location of Bay Scallops:** All bay scallops harvested in Nantucket waters shall be landed in Nantucket and catch shall remain in boxes.

## **Quahog Regulations (Commercial)**

**4.17 Commercial Quahog Harvesting Days/Hours:** Quahogs may be harvested daily from ½ hour before sunrise to ½ hour before sunset.

**4.18 Commercial Quahog Limit:** No more than twenty (20) bushels including shells in town approved boxes shall be taken per permit per day. If there are two (2) commercial permits on board, then 40 bushels may be harvested.

**4.19 Quahog Size Harvest Criteria:** No person shall take or have in his possession quahogs less than one inch (1”) thick at the hinge.

**4.20 Commercial Harvest Methods:** Hand collecting and rakes shall be allowed provided the teeth spacing on rakes is a minimum of one inch (1”) and basket openings are a minimum of 15/16” inches across. All other methods of harvesting quahogs, including dredging, must be pre-approved in writing by the Town of Nantucket or its designee.

## **Blue Mussel Regulations (Commercial)**

**4.21 Commercial Blue Mussel Harvesting Days/Hours:** Blue Mussels may be harvested daily from ½ hour before sunrise to 1/2hour before sunset.

**4.22 Commercial Blue Mussel Limit:** No more than ten (10) bushels including shells in town approved boxes shall be taken per permit per day. If there are two (2) commercial permits on board, then 20 bushels may be harvested.

**4.23 Blue Mussel Size Harvest Criteria:** No person shall take or have in his possession blue mussels less than two inches (2") in length.

**4.24 Commercial Harvest Methods:** Hand collecting, rakes, tongs. All other methods of harvesting blue mussels, including dredging, must be pre-approved in writing by the Town of Nantucket or its designee.

## **Conch/ Whelks (Commercial)**

**4.25 Commercial Conch/Whelk Harvesting Season/Days/Hours:** Conchs/Whelks may be harvested from April 15-December 15, daily from ½ hour before sunrise to 1/2hour before sunset.

**4.26 Commercial Conch/Whelk Limit:** 200 Tagged Pots

**4.27 Conch/Whelk Size Harvest Criteria:** Currently 2 ¾" at the greatest width to be raised 1/8 " per year to the optimal size of 3 ½". (First increase to be implemented by the DMF for the 2014 season).

**4.28 Commercial Conch/Whelk Harvest Methods:** Hand collecting, rakes, and tongs. Pots are limited to state permit holders.

**4.29 Town Permit Required for Commercial Conch/Whelk Harvest in Town Waters:** A town permit is required to commercially conch within Nantucket and Madaket Harbors. The boundary line for Nantucket Harbor will be from the end of the east jetty to the end of the west jetty. The boundary line for Madaket Harbor is from eel point to Ester's Island. (See map for details section 10).

**4.30 Prohibition of Harvest:** Commercial harvest of whelks/conch prohibited every other year. A schedule of closures will be approved by the Town of Nantucket or its designee.

**4.31 Maximum Allowable Pots in Nantucket and Madaket Harbors:** The maximum allowable pots in Nantucket and Madaket Harbor combined will not exceed 90 pots. Tags will be issued in equal number amongst permit holders and are transferrable.

### **Other Shellfish Species (Commercial)**

**4.32** Other shellfish or crab species shall not be taken for commercial purposes from the waters of the Town of Nantucket without the express written permission of the Natural Resources Department, Harbor Shellfish Advisory Board, and the Board of Selectmen.

#### **4.33 Town of Nantucket Commercial Permit Fees**

Bay Scallop	\$250.00
Quahog	\$150.00
Blue Mussel	\$150.00
Conch/Whelk *	\$150.00

\*Closed for new entries

#### 4.34 Commercial Seasons, Days, Limits and Size Restrictions

Species	Season	Daily Harvest Limit	Days/Hours	Size Restrictions
Bay Scallops	November 1-March 31	5 level bushels per permit (2 permits max per boat)	Monday –Friday 6:30am-4:30pm	Must possess a well defined growth ring. <b>Exception: Bay scallops that have a well-defined raised annual growth line located less than 10mm from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least 63.5mm or 2.5"</b>
Quahogs	Year Round	20 bushels per permit (2 permits max per boat)	½ hr before sunrise-1/2 hour before sunset	Must be one inch (1") thick at hinge
Blue Mussels	Year Round	10 level bushels	½ hr before sunrise-1/2 hour before sunset	Must be two inches (2") in length
Conchs/Whelks	April 15-December 15	No Limit (200 pots)	½ hr before sunrise-1/2 hour before sunset	Must be 2.75"



## **Section 5 : Aquaculture**

**5.1 Issuance of Shellfish Aquaculture Licenses (Grants) for Areas Surveyed and Subdivided by the Town.** Once areas are identified by the Natural Resources Department as potentially suitable for the location of shellfish aquaculture, and the areas are under the control of the Town, the Board of Selectmen may exercise their discretion as the licensing authority for the issuance of license/s for shellfish aquaculture (grants) in compliance with [MGL Chapter 130](#).

### **5.2 Previously Established Grants that Become Available**

In the event that a licensed aquaculture area previously certified by the DMF becomes available, it will be considered on whether it should continue for the purpose of aquaculture, and if so, offered first to the Town of Nantucket for propagation use, and if not needed, the next in line on the waiting list of qualified approved applicants shall be notified by the Natural Resources Department. The Board of Selectmen shall hold a public hearing to determine who shall be granted the right to use such available acreage for aquaculture.

### **5.3 Annual License Fee and Due Date**

The annual fee for an aquaculture license to be paid to the Town by each licensee shall be no less than \$25.00 per acre (or portion thereof) per licensee, as required by [MGL Chapter 130; Section 64](#). The fee shall be due no later than March 31 of any given year.

### **5.4 Location of Areas Licensed for Aquaculture (Grants)**

Grants are located in the following areas:

Area 1: Head of Harbor (60 acres)

Area 2: Coskata Pond (10 acres)

Area 3: Pocomo Meadows (6 acres)

Area 4: Coskata entrance (12 acres)

Area 5: Polpis Harbor (12 acres)

\*Approval of the proposed licensed areas shall be determined by the Natural Resources Department, Harbor and Shellfish Advisory Board, and ultimately the Board of Selectmen with appropriate regard for reasonable navigational and recreational/commercial interest in the areas concerned.

### **5.5 Conditions for Use of Area Licensed for Aquaculture**

The Board of Selectmen may license specific areas beneath the waters of the Town to individuals for the purpose of granting exclusive rights to plant, grow and harvest shellfish from that area. Said license is subject to the provisions of [MGL Chapter 130](#), those set forth in current regulations of the Division of Marine Fisheries, these regulations or other town bylaws, as well as any specific conditions or restrictions set forth in the license by the Board of Selectmen.

### **5.6 Process for Approval of Aquaculture Licenses**

The Board of Selectmen or its designee will accept and process applications for area licenses in accordance with [MGL Chapter 130; Section 57](#), and the application procedure of the Town, specifically the Natural Resources Department.

### **5.7 Moratorium on Aquaculture Licenses**

The Board of Selectmen may at a duly advertised public hearing declare a moratorium (a time-specific closure) on license approvals at any time this action is deemed appropriate and in the best interests of the fishery and the environment.

### **5.8 Issuance of Licenses for Aquaculture**

Domiciled Residents: Licenses issued will be issued only to domiciled residents (See Sec.1 Definitions) of the Town, 18 years of age or older, who have the knowledge and experience to fulfill the responsibilities specified in the license, provided that the applicant has held and used a Nantucket commercial shellfishing permit during two (2) of the last three (3) years OR the applicant can demonstrate some experience in shellfish propagation and aquaculture. This may be supported by a letter from a license holder describing the type of work performed and any other information which might be relevant.

\*At such time as a licensee ceases to be a domiciled resident of the Town that individual shall be removed from the license and the waiting list.

### **5.9 Renewal of Aquaculture Licenses**

The initial term for a new license shall be two (2) years. Provided appropriate effort has been demonstrated, as required, the first renewal of a license may be for up to 10 years, unless the licensee agrees to a shorter term. Renewals may be requested and acted upon only during the (6) months immediately prior to the expiration date of the current license. The renewal period shall begin on the expiration date of the existing license.

### **5.10 Working of Grants by Non-Licensees**

All individuals authorized by a licensed grant holder to work the grant in the absence of a licensed grant holder must be registered with the Shellfish Department. Licensees are responsible for the actions of all such employees or otherwise affiliated persons while they are working on the grant designated by their registration.

### **5.11 Limit on Size of Grant**

No licensee shall hold a license for, or have use of, more than (1-4) acres (depending on availability) in during lease years 1-3 and upon good standing and demonstrated need for expansion may apply for (1-6) more acres but not to exceed 10 acres total per lease. Special consideration may be given by the Board of Selectmen or its designee for earlier expansions if environmental conditions prohibit or alter production plans as originally proposed.

\*Each person named on a license as a licensee shall be charged with the total acreage covered by that license.

### **5.12 Rights of Use and Transfer**

Licensees shall have the exclusive use of the area described in their license for the purpose of aquaculture, for the duration of their terms. No other individual may use the license without the express permission of the licensee(s).

Licensees may transfer the rights or responsibilities assigned to their license to any other individuals, companies or corporations by vote of the Board of Selectmen. [\(See MGL Chapter 130; Section 58\)](#)

### **5.13 Inheritance of Rights to Use an Aquaculture License**

Any license issued under the provisions of [MGL Chapter 130, Section 57](#) shall, upon the death of the sole licensee, continue in full force and effect, subject to the same terms, conditions and regulations imposed by the original license, for the balance of the unexpired term or one year, whichever is longer. This is for the use and benefit of the immediate family of the deceased licensee. For purposes of this section the term immediate family shall mean spouse, son, daughter, mother, father, brother and sister of said deceased licensee.

### **5.14 Liability of the Town**

The Town will not be held liable for any damage to a licensed area, or gear, or stock thereon, by reason of any dredging or other harbor improvements undertaken by the Town.

**5.15 Evidence of Productivity:** Shall be defined as listed below in “Minimum Levels of Production”.

### **5.16 Minimum Levels Production**

There shall be minimum level of shellfish production required in order to retain an aquaculture license. This shall be: a minimum inventory maintained of 10,000 shellfish per acre. These standards are subject for review by the BOS or its designee and may be amended.

### **5.17 Failure to Meet Production Levels**

Failure of the licensee/s to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area, as stated in [MGL Chapter 130; Section 65](#).

### **5.18 Waiver of Production Requirements**

The Natural Resources Department shall have the right to waive the minimum production requirement when there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

### **5.19 Extension of or Addition to Licensed Area (Grant): Investment and Production**

In the event of an extension being granted to a presently licensed area, the same level of effort per acre for the newly licensed, area is required as described above in Sections

### **5.20 Annual Reports**

Licensees shall file annual reports under oath, on their activities in accordance with [MGL Chapter 130; Section 65](#) on or before the 31st of December each year. The report must include any changes or deviation from the original plan filed with the original application or any subsequent application

### **5.21 Penalization for False Report**

Any licensee who submits a false licensed area report in violation of MGL Chapter 130; Section 65 shall be penalized by the revocation of his or her license.

### **5.22 Notification of Failure to Meet Minimal Requirements**

Subsequent to the filing of the annual report, the Natural Resource Department will notify any license

holder who, in the opinion of the town, has failed to meet the minimum requirements. The license holder has the right to appeal to the Board of Selectmen within two weeks after notification. If no appeal is filed on a timely basis, the license will be forfeited.

#### **5.23 Annual Inspection of Each Grant**

The Natural Resources Department shall make no less than one visit per year to the site of each licensed area in the company of the license holder.

#### **5.24 Required State Seed Permit**

No person shall harvest, plant, transplant, transport, sell or otherwise have in their possession seed shellfish, without first obtaining a state seed permit from the Massachusetts DMF, as required by [MGL Chapter 130, Section 80 and CMR 322, Section 15.04\(b\) 1](#)

#### **5.25 No Lethal Predator Control Measures**

It shall be unlawful to use lethal means to control or exclude predators or other organisms from any area used for aquaculture. Non-lethal enclosures, including, but not limited to, nets, fences, bubble curtains and noise may be used, if approved for a specific site and purpose. Invertebrate predators, pests and fouling organisms may be removed manually from an aquaculture site and disposed of in a lawful manner ([CMR 322, Section 13.7.2](#)).

#### **5.26 No Killing of Horseshoe Crabs On Grant**

Horseshoe crabs shall not be intentionally killed while practicing predator control.

#### **5.27 No Harm to Endangered Species**

No person shall maintain a predator control method that will intentionally threaten any endangered species.

#### **5.28 Removal of Bay Scallop Seed From Licensed Area**

In the event that a significant amount of bay scallop seed sets within the boundaries of a licensed aquaculture lease, every effort shall be made to remove and relocate the seed by the licensee and the Department of Natural Resources.

#### **5.29 Grants Shall Be Marked**

Every licensee shall mark the corners of the area licensed under their license with buoys marked with the license number. From April 1st to November 1st, the corners shall be marked with float balls approved by the Natural Resources Department. Buoys shall be attached to their anchor by cables, chains or non-floating lines. Numbers shall be marked on said buoys, and shall be at least two (2) inches high and shall be black in color. Winter sticks shall be required from November 1 through April 1.

#### **5.30 Marking of Gear**

Every licensee shall clearly and permanently mark any and all trays, boxes, holding cars and all other aquaculture gear with the license number of the license area in a manner that is clearly visible.

### **5.31 Gear Must be Secured**

All gear on licensed areas must be securely fastened to the bottom or removed. All unusable gear, including loose nets, twisted and damaged racks, loose envelopes, grow out bags and fastening devices must be removed from a licensed area and either disposed of properly.

### **5.32 Displaced Gear Retrieval**

If the gear is not properly secured and ends up outside of the leaseholders designated area or on shore, it is up to the leaseholder to provide immediate removal.

### **5.33 Sinking of Floating Gear for the Winter**

Oyster Gro cages or other floating/suspended gear located in NT5 must be sunk and secure by December 15<sup>th</sup>, unless the Natural Resources Department deems it necessary to require an earlier winterizing date due to potential damaging weather or water temperatures.

### **5.34 Exception for Ice in Harbor**

The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice hampers the ability of a licensee to immediately comply with these regulations.

### **5.35 Fines for Gear Violations**

After receiving a written warning, the licensee has 7 days to comply. After the seventh day, a fifty dollar ticket shall be issued for each day of noncompliance. After 30 days of non-compliance, the licensee shall have his or her license revoked.

### **5.36 Hydraulic Harvesting of Shellfish from Grant Areas**

The use of hydraulic harvesting gear for the purpose of harvesting shellfish from within the boundaries of a licensed area is permitted under the following conditions and with the following restrictions:

- a) Devices used shall be for the hosed ejection of water under pressure into a shellfish bed;
- b) Pressure pumps shall not exceed five (5) horsepower as rated by the manufacturer;
- c) Noise control devices (i.e. mufflers) shall be in place and in good repair at all times;
- d) Not more than one device may be used on any grant at any time
- e) Hours of operation shall be between 7:00 a.m. and ½ hour before sunset;
- f) The Natural Resources Department shall have the authority to direct an individual involved in the use of such equipment to cease and desist if they feel that there is a problem that necessitates such action. Any individual so ordered shall have the right to appeal the decision to the Board of Selectmen, at their first scheduled meeting after the service of such order.

### **5.37 Extension of Acreage Without Permission**

No aquaculture license holder may willfully extend or cause to extend his or her grant boundaries, or allow cultivation, operation, propagation or products and equipment to exist beyond the duly recorded boundaries of his or her licensed area. The Natural Resources Department may cause a licensed area to be re-surveyed by a registered civil engineer, in the event that the assigned boundaries of an aquaculture license are called into question. If a violation of this section is then established, the aquaculture license of the individual guilty of the infraction shall then be revoked.

**5.38 Disturbance of Grant by Other Than the Licensee and (MGL Chapter 130; Section 57, Section 63 and Section 67)**

**5.39 Abandonment or Default of Aquaculture Lease:** Leaseholder is required to remove all personal property from the licensed area at his/her cost. If gear is not completely removed, the Town of Nantucket may remove the gear at the expense of the leaseholder.

**5.40 Adherence to All State Vibrio Protocols**

All licensed aquaculture growers must adhere to all state policies regarding vibriosis and the harvest of shellfish

**Section 6. Scientific Research**

**6.1 Research and Propagation Projects/Plans involving Town Waters (Non-Commercial)**

The applicants shall provide a plan of the project including all aspects of their backgrounds, intended management and operations of the project to the Natural Resources Department, Shellfish Harbor Advisory Board, and if appropriate, the Board of Selectmen 3 months prior to the start of the project.

**6.2 Research License**

Researchers are required to obtain the necessary permits and approvals required for scientific collection or shellfish propagation from the Town of Nantucket and the Division of Marine Fisheries.

**6.3 Dissemination of Data and Results**

All data and subsequent results and analyses of the project shall be made available to the Natural Resources Department, Shellfish Harbor Advisory Board, and the Board of Selectmen and the Division of Marine Fisheries at predetermined times to be established in the plan of project.

**6.4 Excess Research Product Returns to Town (Non-Commercial)**

Shellfish products resulting from the exercise of these approvals and permits, in excess of those required for the aquaculture research and development shall be turned over to the Town of Nantucket annually, for appropriate use by the Natural Resources Department.

## **Section 7 – Enforcement**

**7.1-Enforcement Personnel:** In compliance with Chapter 122 § 122-16 of the Code of the Town of Nantucket the Shellfish Warden as designated by the Board of Selectmen is the primary enforcement personnel. The Board of Selectmen shall assign any other personnel or deputies as they see fit for shellfish enforcement.

**7.2-Penalties:** Recreational and Commercial Violations and the associated penalties are listed in the tables below. Any penalty may be appealed to the Board of Selectmen within 30 days of the issuance.

**7.3-Penalty Fees:** Penalties must be paid in full with a receipt provided to the Natural Resources Department.

**7.4-Disposition of Unlawful Catch:** All confiscated catch will be documented and photographed before putting unlawful shellfish back into the water by the Shellfish Warden ([MGL Ch.130; Section 12](#))

**7.5-Suspension:** Suspension applies to open fishing days only

## 7.6 Recreational Violations

Violation	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense	Final Offense
No Town License on Record	\$125* loss of catch and cessation of shellfishing for the day	\$250 and loss of catch and cessation of shellfishing for the day	\$500 and loss of catch and cessation of shellfishing for the day	\$1000 and loss of catch and cessation of shellfishing for the day
Refusal of Inspection	\$250	\$500	\$1000	\$1000 and loss of license
Over Limit for the day/week	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Shellfishing in Closed Areas	\$125*	\$250	\$500	\$1000
Taking of Undersized Shellfish	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Taking Shellfish on Closed Days/Hours	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Taking Shellfish Out of Season	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Taking of Shellfish Using Unapproved Methods	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
No Pin Displayed	\$25* loss of catch and cessation of shellfishing for the day	\$50 loss of catch and cessation of shellfishing for the day	\$75 loss of catch and cessation of shellfishing for the day	\$100 loss of catch and cessation of shellfishing for the day
No Dive Flag Displayed	\$25*(cessation of shellfishing for the day)	\$50(cessation of shellfishing for the day)	\$75(cessation of shellfishing for the day)	\$100(cessation of shellfishing for the day)
Shipping Live Shellfish Off-Island without permission for purposes other than consumption (i.e. Broodstock or Propagation)	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits

\*A verbal warning may be given for the first offense at the discretion of the Shellfish Warden



## 7.7 Commercial Violations

Violation	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense	4 <sup>th</sup> Offense
Refusal of Inspection	10 Days off and confiscate catch	30 days off and confiscate catch	60 days off and confiscate catch	1 year off and confiscate catch
Seed >5% and undersized shellfish	1 Day off and confiscate catch *1 <sup>st</sup> Offense in subsequent years=5 days off	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch, re-apprentice, and cant purchase license until suspension is up
Red Flag Fishing	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch, re-apprentice, and cant purchase license until suspension is up
Taking of Shellfish Using Unapproved Methods	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch
Fishing on a Suspended License	10 days off and confiscate catch	30 days off and confiscate catch	60 days off and confiscate catch	1 year off and confiscate catch
Shellfishing in Closed Areas	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch
Taking Shellfish on Closed Days/Hours	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch
Poaching (From Aquaculture Lease)	subject to criminal penalties and	subject to criminal penalties and	subject to criminal penalties and	subject to criminal penalties and
Lack of Proper Permits	confiscate catch and \$50 fine	confiscate catch and \$150 fine	confiscate catch and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Greater than 5% By-Catch	confiscate and \$50 fine	confiscate and \$150 fine	confiscate and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Taking	confiscate By-	confiscate	confiscate and	confiscate catch/

Shellfish Out of Season	Catch and \$50 fine	and \$150 fine	\$300 fine/and 10 days off	Lose active permit for 30 days/ \$1000 fine
No Permit for saleable by-catch	confiscate By-Catch and \$50 fine	confiscate By-Catch and \$150 fine	confiscate By-Catch and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Over Daily Bushel Limit (Extra box or Partial box)	confiscate catch and \$50 fine	confiscate catch and \$150 fine	confiscate catch and \$300 fine	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Tags on Boxes	confiscate By-catch and \$50 fine	confiscate and \$150 fine	confiscate and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Shipping Live Shellfish Off-Island for purposes other than consumption (i.e. Broodstock or Propagation)	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits
Fish Early/Late	1 day off*	5 days off	10 days off	30 days off
Failure to Submit Monthly Catch Report	1 day off*	5 days off	10 days off	30 days off
Dredges in excess of 35 lbs.	\$50 fine*	\$150 fine	\$300 fine	\$500
Exceeding bushel limit when picking up a culler	\$50 fine*	\$150 fine	\$300 fine	\$500
Mounding	confiscation of extras and \$50.00 fine*	confiscation of extras and \$100.00 fine	confiscation of extras and 1 day off	confiscation of extras and 5 days off
Broken/ Altered Bushel Boxes	\$50.00 fine*	\$100.00 fine	1 day off	5 days off
No Dive Flag Displayed	\$50.00 fine*	\$100.00	1 day off	5 days off

\*A verbal warning may be given for the first offense at the discretion of the Shellfish warden

## **Section 8 – Definitions**

Unless otherwise identified, all cited Sections refer to sections of the Town of Nantucket Shellfishing Policy and Regulations. The terms listed in this Section, when used in the Town's Shellfishing Policy and Regulations, shall have the meanings that follow:

**Annual Aquaculture Report:** A required yearly report form detailing aquaculture production and gear summary for aquaculture licenses to submit annually.

**Apprentice** – applicant for a commercial shellfishing permit that has never been issued a permit from the Town of Nantucket in previous years. (specific requirements as defined in Section 4.6)

**Aquaculture** -The farming of aquatic marine organism including, but not limited to fish, mollusks, crustaceans, echinoderms and plants. Farming implies some sort of intervention in the rearing process to enhance production including, but not limited to controlled propagation, feeding and protection from predators.

**Aquaculture License/Permit** - An authorization, granted by a vote of the Board of Selectmen, to utilize a specific tract of land under coastal waters (1) to plant and grow shellfish in bottom or off bottom culture; (2) to place shellfish in or under protective devices affixed directly to the tidal flats or land under Nantucket's coastal waters, such as boxes, pens, trays, bags or nets; (3) to harvest and take legal shellfish; (4) to plant cultch for the purpose of catching shellfish seed; and (5) to grow shellfish by means of racks, rafts or floats (MGL Chapter 130, Sections 57 - 68).

**Aquaculture Licensed Area (Grant)** - a designated bottom area, certified by The Department of Marine Fisheries (DMF) and licensed by a vote of the Board of Selectmen, on which the licensee may plant, grow and harvest shellfish (MGL Chapter 130; Sections 57 & 68).

**Aquaculture Permit** - (See Permit)

**Basket Rake** - A hand-held implement used for the harvesting of shellfish, which is similar to but longer than a standard clam hoe, which has a basket and no more than twenty (20) teeth, is no wider than 12 inches at its widest part, does not have a T handle, and is only to be used on foot

**Bay Scallop** - A marine mollusk of the species *Argopecten irradians*

**Blue Crab** - a species of crustacean known as *Callinectes sapidus*

**Board of Selectmen** -The Nantucket Board of Selectmen (BOS); Nantucket's elected executive Board, designated by the State (MGL Chapter 30) as the regulatory Board that has jurisdiction over shellfishing in the Town.

**Bull Rake** - A T-handled hand-held and hauled implement used for the harvesting of shellfish. It shall be 12 inches or wider and have a fixed basket and teeth.

**Bushel/ Town Approved Box**- U.S. dry measure; 2150.42 cubic inches, or 32 quarts (see picture in Appendix A).

**By-Catch** -The incidental capture of non-target species.

**Clam Rake** - A hand tool of typically eight (8) tines or less, used to manually bring clams to the surface of the substrate.

**Closures** - any area or time period as designated by the Division of Marine Fisheries, Board of Selectmen or their designee prohibiting the taking of shellfish.

**CMR** -Code of Massachusetts Regulations.

**Commercial Harvest** –The harvest of shellfish for sale, trade, or other consideration.

**Conch/ Whelk** - any species known as *Busycon carica* (knobbed whelk) and *Busycotypus canaliculatus* (channeled whelk)

**Constable (Warden)** -The municipal employee, appointed by the Board of Selectmen, who is in charge of administering the management of the fishery

**(To) Cull** -to remove dead, dying, undersized or otherwise unsuitable organisms (also, the organism which is removed).

**(To) Dig and Take** -(archaic); **See (To) Harvest**

**Dipnet**-A hand held net

**(To) Dive** -The use of SCUBA, surface supplied air, or snorkel to harvest shellfish.

**DMF** - Division of Marine Fisheries.

**Drag / Dredge** - A heavy metal frame with an attached bag, which is towed or dragged along the seafloor to catch bottom dwelling shellfish. Some have metal teeth along the base of the frame that act like a rake.

**Eelgrass** – small genus of widely distributed seagrass.

**Eels** – an elongated fish Anguilliformes.

**Fyke** - A long bag-shaped fishing net held open by hoops that act as a cul-de-sac funnel.

**Glass Eel/Elver** -Eel in its transparent, post-larval stage.

**Grant** - See Aquaculture License/Licensed Area

**(To) Handpick** -The transfer of shellfish to a container from the substrate by hand or with a hand-held tool of eight (8) tines or less.

**(To) Harvest** -To gather shellfish or other marine organisms in a container of any sort after sorting and separating them from what has initially been taken from the habitat.

**Harvesting Area** - An area approved for the taking of shellfish.

**Handpicker** - An individual who practices handpicking.

**Intertidal**-The land or area between the mean high and the mean low watermarks.

**(To) Land** -To bring harvested shellfish by vessel to the Town Pier and to tie up before proceeding elsewhere; to bring harvested shellfish ashore above the mean high water line.

**License Holder** - A person or persons, or a firm or corporation holding a license issued by the Board of Selectmen under the provisions of MGL Chapter 130.8

**Licensee** - See License Holder

**MGL** –Massachusetts General Law.

**Mean High Water (MHW) / Tide** -The average elevation of all high waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of high tide.

**Mean Low Water (MLW) / Tide** -The average height of the low waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of low tide.

**Mounding** – term used to describe the act of piling scallops in an approved bushel box so that the scallops exceed the legal level limit of the box.

**Mussel** - A marine mollusk of the species *Mytilus edulis*.

**Nub Scallop** – A fall spawned scallop defined by the growth ring being less than 10mm from the hinge.

**Oyster** - A marine mollusk of the species *Crassostrea virginica*.

**Permit** - A certificate granting permission to engage in specific activities issued by the appropriate authority.

**State Aquaculture Permit** - “seed” or propagation permit as defined in MGL, Chapter 130; Sections 80 and 69 and CMR 322, Section 15.04 (b)(1): Authorizes the possession and growing of seed shellfish from an approved source. May be endorsed for the use of upwellers or similar nursery

systems to enlarge hatchery seed for planting, but not for resale. May be endorsed for the sale of regulated species below the minimum size established by regulation if an operational plan to control sale, shipment, tagging and record keeping is approved by the Director.

**Shellfish Transaction Card** - (CMR 322, Section 7.01 (2)(k)), issued by DMF: Authorizes only the named individual holding a commercial fishermen permit endorsed for shellfish and seaworms to sell shellfish and seaworms, and shall be used in conjunction with either a Massachusetts driver's license or a Registry of Motor Vehicles identification card.

**State Commercial Permit (Commercial Fishing Permit / Shellfish Permit)**, issued by DMF: Allows an individual to take, land and sell (to a licensed dealer) shellfish and seaworms. A shellfish ID card, from the Division, and town permit are also required.

**Petite Oysters** – Aquaculturally reared oysters, whose height (from hinge to shell margin) is between 2.5 and 3 inches.

**Planted Areas**- Areas in which the Shellfish Department has planted shellfish for purposes of propagation or transplanting.

**Poaching** – The harvesting of shellfish, illegally, from any area.

**Quahog** - A marine mollusk of the species *Mercenaria mercenaria*, commonly called the hardshelled clam.

**Quart**- 67.201 cubic inches (U.S. Dry Measure).

**Raking** - Gathering oysters and/or other materials using a rake and then transferring this accumulation to a container, vehicle or vessel.

**Razor clam** – a marine mollusk of the species *Ensis directus*

**Red Flag** - Closures of both recreational and commercial shellfisheries and shall be noted by red flags as posted by the Shellfish Constable.

**Resident** - A declared resident of the Town of Nantucket: Written proof that Nantucket is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Board of Selectmen or their designee. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or verification information as deemed necessary by the issuing agency. To qualify as a resident under these regulations an individual must have maintained that residence for one full year.

**(To) Scratch** -To harvest clams with the aid of a clam rake.

**Seed** - Quahogs, less than (1) one inch wide, across both valves at the hinge, soft-shell clams less than (2) two inches in length (the largest measurement, 90 degrees from the hinge to outer margin of the

shell); oysters, with the exception of petites, less than (3) three inches in height (from hinge to outer margins of the shell), and scallops without a defined annual growth ring.

**Softshell Clam (Steamer)** - A softshell clam of species *Mya arenaria*.

**Shellfish** - Softshell clams, whelks, mussels, oysters, snails, quahogs, razor clams (razor fish), bay scallops, sea scallops, sea clams, and blood arks.

**Spat** - An oyster or similar bivalve mollusk in the larval stage, especially when it has settled on and attached itself to a surface on which it can then proceed to grow.

**Strandings** – When shellfish are beached or at risk in shallow waters due to wind driven storm events

**Subtidal**-The body of water or area below that of mean low water for spring tides; habitats rarely, if ever, completely uncovered by low tides.

**Surf Clam (Sea Clam)** - A clam of species *Spisula solidissima*.

**(To) Take** -To harvest.

**Tongs** - A hand-held and hauled implement used for the harvesting of oysters. They have a scissor mechanism to close two baskets upon themselves.

**Town** -The Town of Nantucket.

**Transaction Card** - See Permits; Shellfish Transaction Card.11

**(To) Transplant** -The moving of shellfish from one area to another.

**Warden** - See Constable

**Waters** -Coastal waters, tidal flats, tidal creeks, and all salt or fresh waters within the boundaries of the Town of Nantucket.

**Weights (for dredges):** Window weights used to make the dredge heavier

## Section 9-Pictures of Town Approved Shellfishing Containers

Approved recreational containers with legal limits:

Metal Bushel Basket



Level Metal Bushel Basket With Float





Level Metal Bushel Basket With Float



Level Orange Bushel Basket With Float

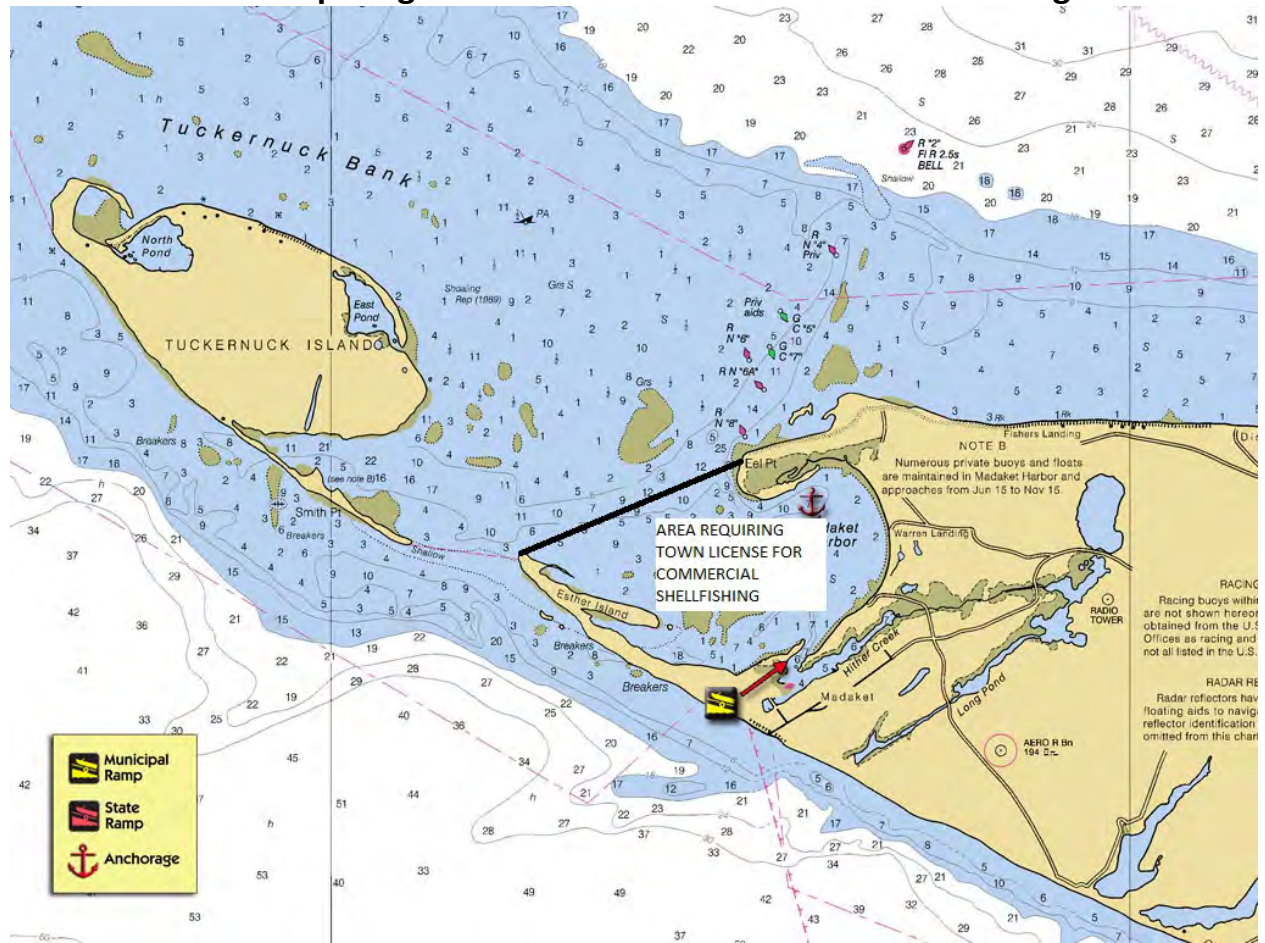


Appropriate Level For Orange Bushel Basket



Town of Nantucket "Level" Bushel Box (Appropriate Condition)









### **RESOLUTION CONCERNING 13 C STREET HDC APPEAL**

*This resolution concerns the lawsuit challenging the Board of Selectmen's decision from January 27, 2016 (on a 2-1 vote, with 2 members recused) upholding the appeal of Historic District Commission Certificate of Appropriateness No. 64611, for property located at 13 C Street. Section 11 of the Historic District Commission Act requires that appeal decisions be by "a majority vote of the members of the board," i.e. by a vote of at least 3 members of the 5 member board, not by a majority of a quorum of the board. The quorum of the board which decided the appeal agrees that the 2-1 vote to uphold the appeal in fact constitutes a denial of the appeal for failure to achieve the requisite quantum of vote, that the appeal decision may not be used as grounds for denial of an application for a building permit, and that Certificate of Appropriateness No. 64611 remains in full force and effect.*

TOWN OF NANTUCKET  
BOARD OF SELECTMEN

Appeal of Decision of the  
Nantucket Historic District Commission  
Relative to 13 C Street  
Assessor's Map 60.2.1, Parcel 76

DECISION

This is an appeal filed by Joseph Freeman and Juliana and Theodore P. Lyman of 12 C Street of Certificate of Appropriateness 64611 issued by the Nantucket Historic District Commission (the "HDC") on October 23, 2015. The Board conducted a public hearing on the appeal on December 2, 2015. Selectman Holdgate recused herself from the hearing as did Chairman DeCosta. The appeal was heard by Selectmen Atherton, Fee, and Glidden.

The attorney for the appellants, Peter Kyburg, made a presentation on behalf of the appellants at the public hearing. He argued that the size and scale of the structure is inconsistent with the guidelines in Building with Nantucket in Mind, which is the HDC's official design guidelines manual, and that the HDC's decision to approve the project should be overturned as inconsistent with the HDC's guidelines. He noted that the manual recommends that new construction in this section of Madaket maintain the historic height and scale of low profile cottages, one to one and one-half stories tall, and that this project proposal was well out of scale with these guidelines. His presentation was consistent with his written submission to the Board dated November 2, 2015.

HDC Chair Linda Williams spoke at the public hearing on behalf of the HDC. She emphasized that the HDC spent a lot of time on the underlying application and that the project was revised to a point at which the HDC believed it was appropriate for the setting. Attorney Steven Cohen presented on behalf of the applicant and argued that the decision should be upheld on the grounds that it is not arbitrary and capricious.

After the close of the public hearing, Selectman Glidden moved to defer a decision pending further review of the underlying facts and the opportunity to consult with counsel should any board member so choose. This motion passed 2-1, with Selectman Fee opposed.

The Board resumed deliberations at a duly noticed public meeting on January 6, 2016. Selectman Glidden noted two concerns: 1) the inconsistency of this proposed expansion with the concept of "additive massing" described in the HDC's design guidelines; and 2) the inconsistency of the approval with the design guidelines for residential structures in this section of Madaket.

On the first issue, the Board notes that the HDC's guidelines have allowed, in appropriate circumstances, for an incremental expansion of an existing house so that a

house “was extended backward, and sometimes laterally, by the attachment of smaller volumes of related shape.” See *Building with Nantucket in Mind*, p. 67 (emphasis supplied). The proposed expansion at issue on appeal is entirely inconsistent with this concept, where the expansion overwhelms the original structure.

On the second issue, the Board finds that the approval is inconsistent with the HDC’s design guidelines for the old section of Madaket where the property is situated. The guidelines provide that this section consists of “cottages” which are “almost all 1-to 1 ½-stories and generally are rectangularly aligned and oriented to the water.” *Id.*, p. 98. The guidelines note further that the “diversity of these buildings is unified by their consistent low profile, shingled and vernacular simplicity...” and that new construction in this area “should maintain these qualities, especially the building height and scale.”

The Board is mindful of the fact that it is not to substitute its judgment for that of the HDC when deciding whether a certificate of appropriateness was correctly issued. However, the Board finds that the HDC acted arbitrarily and capriciously in this case for failure to follow its own published design guidelines and standards, or at least provide an explanation as to why such guidelines and standards should not be followed in this particular instance. The Board notes further that the fact that the HDC may have spent a substantial amount of time on a particular application does not necessarily mean that the ultimate decision was not arbitrary and capricious.

At the close of deliberations on January 6, 2016, Selectman Glidden moved that the appeal be upheld and that the HDC decision be overturned on the grounds that the approval is inconsistent with established standards for exterior architectural features in the historic setting in question and that Town Counsel be directed to prepare a written decision for approval by the Board, including the terms of a remand order consistent with such vote and the evidence presented at the public hearing. This motion passed 2-1, with Selectman Fee opposed.

Pursuant to the foregoing vote, the Board hereby upholds the appeal, and vacates Certificate of Appropriateness No. 64611. The Board remands the matter to the HDC only in so far as the applicant desires the opportunity to revise the application consistent with this decision. Should the applicant decline the opportunity to revise the application, there is no need for further remand proceedings as the Certificate of Appropriateness is hereby vacated.

Signed this 27 day of January, 2016.

Town of Nantucket  
Board of Selectmen

~~\_\_\_\_\_~~ (Kro)  
~~\_\_\_\_\_~~ (nfa)  
Ridgely  
Glendon  
~~\_\_\_\_\_~~ (Kro)

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